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Special Freight Services

Allowances and Privileges

PART II

Prepared under the direction of the *Advisory Traffic Council of
The American Commerce Association*

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PREFACE

IN THE movement of commodities over the various transportation systems of the country there are many special services, allowances and privileges granted the shipper or consignee by the carrier, which have an important effect upon the rate or the shipment and exert a strong influence upon successful distribution and marketing.

Without a proper understanding of these factors it is impossible to take full advantage of the transportation facilities offered or to market goods successfully in competition with those who possess a knowledge of their advantages and are able to utilize them in an effective manner. For this reason such knowledge becomes a necessary part of the equipment of all traffic managers, and by its employment markets are reached which would otherwise prove inaccessible or unprofitable.

Prior to the establishment of the Interstate Commerce Law there was a lack of uniformity in the application of these services, allowances and privileges, resulting in the granting of undue preference to certain shippers and localities.

Since the passage of the act, however, all such matters have come under the regulative authority of the Interstate Commerce Commission, have been legalized and made uniform, and have become a regular and highly essential part of the transportation service. A knowledge

of their application is a vital requirement of successful commercial or industrial development.

The purpose of this volume and the two other volumes on "Special Freight Services," is to present and discuss these services, allowances and privileges in such a manner as to show their definite application to freight movements, in conformity with tariff and regulative requirements.

Part 2 of "Special Freight Services," which constitutes the present volume, deals consecutively with the Rules and Regulations governing Weights and Weighing, the Loading and Unloading Service, the Switching Service, Reconsignment Service, and Demurrage Charges and Rules. The last named subject, one of the most important in the volume, from the standpoint of both operation and service, is dealt with in a comprehensive manner, and the various legal and administrative steps which have led to the rules and regulations governing the present methods of assessing these charges, are fully presented and discussed.

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CHAPTER I.

WEIGHTS AND WEIGHING.

- § 1. Introduction.
- § 2. Interstate Commerce Commission's Investigation of Weighing of Freight and Remedies Therefor.
 - (1) Installation of Track Scales.
 - (2) Inspection and Testing.
 - (3) Operation.
 - (4) Tare Weights.
 - (5) The Weighing of Special Commodities.
 - 1a. Grain.
 - 1b. Complaint of Chicago Board of Trade.
 - 2a. Coal.
 - 3a. Lumber.
 - (6) General Rules.
 - (7) Remedies.

CHAPTER I.

WEIGHTS AND WEIGHING.

§ 1. Introduction.

The application of all rates of charge for transportation over railroads in the United States is made upon the basis of a unit of quantity. That unit of quantity may be either an arbitrarily fixed poundage, such as the hundredweight or the short or long ton, or an arbitrarily fixed numerical quantity or lot, such as a single package, a piece, or a fixed number of packages or pieces as a carload lot of definite size.

At the present time the accepted unit of weight is the hundredweight, or multiples thereof, such as the ton, etc.

Commercial methods and the multitudinous volume of articles of commerce render imperative the fixing of a standard of quantity which shall be uniform, fair, and practicable, and in this respect the hundredweight and the ton have become permanently established.

The methods employed by carriers for ascertaining weights of shipments have been the subject of persistent and bitter attack by shippers throughout the country. The grounds for such complaints have been numerous, to-wit: inaccuracy in weights, false weights, lack of adequate track scales, use of track scales which are inaccurate and out of order, inaccurate tare weights of cars, custom of estimating weights, discrimination between shippers in matter of weights, discrepancies between origin and destination weights, weight allowances for shrinkage, etc.

It is, of course, manifest that inaccuracies in weighing result in the imposition of unreasonable charges and in discrimination between shippers just as much as do differences in the freight rate itself. Accuracy in the matter of shipment weights is of importance in proportion to the transportation charge and value of the article, and to assess freight charges upon any other than actual weight is to impose a rate either too high or too low and to discriminate between different shippers.

§ 2. Interstate Commerce Commission's Investigation of Weighing of Freight—and Remedies Therefor.

The matter of correct weights for shipments of freight is of paramount importance in the computation of freight charges. The Investigation of Alleged Irregularities and Discrepancies in the Weighing of Freight by Carriers subject to the Act to Regulate Commerce, conducted by the Interstate Commerce Commission in 1913 (28 I. C. C. Rep. 7, 10, 17, 21, 24, 26, 30), resulted in an exhaustive examination into the carriers' weighing methods and a comprehensive report by the Commission and suggested remedies for the evils found to exist. The following are extracts from the report:

"This investigation was undertaken in consequence of numerous complaints received from all sections that the weights upon which freight charges were assessed were grossly inaccurate and that great difficulty was experienced in correcting these inaccuracies. The principal complaint was against carload weights, and the weighing of carloads by track scales has been the principal subject investigated, although some attention has been incidentally given to platform scales.

"The investigation has taken a very wide range. Hearings have been held in all parts of the country, occupying

46 days, in the course of which over 7,000 pages of testimony have been taken and a great number of exhibits accumulated. Everything connected with the installation and the operation of track scales has been gone into, and the various rules of the carriers for the ascertainment and correction of weights have been considered.

"The results of this investigation have abundantly justified the proceeding. The first hearing made plain the deficiencies of the carriers in this respect, and immediate steps were taken for the betterment of weighing conditions, which have already resulted in most marked improvement. Looking at conditions as they existed when the order instituting this investigation was made, on January 15, 1912, this can be affirmed with some confidence: Three-fourths of all the track scales in use in the United States were of defective design or improperly installed. Less than one-fourth were properly inspected. Not more than 10 per cent were accurately tested, and a majority were not in any proper sense tested at all. The methods of weighing were heedless and unsatisfactory in many cases. The stenciled tare weights upon 80 per cent of all cars were erroneous. While check weighing at certain points where better facilities were available and superior operating conditions prevailed tended to reveal many of the original erroneous weights, these changes in the original weight were a source of constant irritation and inconvenience to shippers.

"The carriers insist that these errors were as often in favor of as against the shipper, and that on the whole they would offset one another. There is, and there can be, no intelligent opinion upon this point, nor is this, perhaps, material. The freight rate is in most cases assessed by the hundred pounds. It amounts to the same thing whether the rate be high or the weight be excessive. Inac-

curacies in weighing result in the imposition of unreasonable charges and in discrimination between shippers just as really as do differences in the freight rate itself. Nor does it meet the situation to say that the railroad has given to one shipper, by assessing charges upon too low a weight, what it has taken from another by enforcing an excessive weight. In so far as possible the weight assessed should be the true weight.

"This report will deal as briefly as possible with the following matters:

- "1. The installation of the track scale.
- "2. Inspection and testing.
- "3. Operation.
- "4. Tare weights of cars.
- "5. Weighing of particular commodities.
- "6. General rules.
- "7. Remedial suggestions."

(1) Installation of Track Scales. "This record contains the testimony of the representatives of one or more scale manufacturers and of the manufacturers of various devices used in connection with track scales, and also that of several railroad experts from those systems which have given special attention to this subject. There are exhibits showing the ideal track scale and the method of its installation, but it would not be profitable to attempt to here discuss any of these matters of technical detail. It is only desired at this point to emphasize the necessity of a proper installation, without which the best scale can not be kept in proper condition or made to produce accurate results.

"The standard track scale of today has a capacity of from 200,000 to 300,000 pounds. Its length, meaning the length of the track above the scale over which the cars pass, is from 40 to 52 feet. The commonest defect in the installation of the scale seems to be in the construction of the pit

containing the scale itself. Not only should the foundations be sufficient, but the pit itself should be so constructed that it can be kept absolutely dry and can be readily entered for purposes of inspection. When great accuracy is desired it should be kept at a uniform temperature.

"Formerly the platform above the scale was attached to the scale itself, the track upon which the car stood being laid on the platform. With this system of construction the platform is very liable to bind at the edges, producing inaccuracy in weights, and the modern method is to support the tracks upon which the car rests when being weighed upon standards which pass down through the platform, so that the platform itself is stationary and not connected with the scale.

"A second track is laid upon the platform so that the car, when the scale is not in use, may be passed over the scale without engaging its mechanism.

"The cost of a modern track scale, installed, depends somewhat upon the location where the installation is to be made, and runs from \$3,300 to \$10,000, according to the size and quality of the scale.

"The state of Oregon has recently employed an inspector of track scales, and we quote below from his first report to the railroad commission of that state:

"In the forty scales that I have inspected I have found only one that I could pass without adjustment. This was a privately owned scale, which did not belong to any railroad. The scales inspected have varied from forty to twelve hundred pounds from correct weight; some have weighed heavy and others have weighed light.

"Not a single scale in the lot was, in my judgment, originally properly installed. I found the main platform bearings out of place, and many scales have been found

to be binding. There were all kinds of false bearings, levers were out of level, and connections not plumb; check rods too tight—in fact, I found about every possible defect that would cause a scale to give the wrong weight.’

“While conditions are improving, and while but little remains to be desired in the case of some few railroads, the above illustrates what is still true of a very considerable part of this country. This record leaves no reasonable doubt that a majority of the track scales now in use should be at once rebuilt in order to obtain reasonably accurate results. It is also apparent that many additional scales should be installed.”

(2) **Inspection and Testing.** “While a track scale is a strong and sturdy piece of mechanism intended to deal with heavy weights and to resist rough usage, it is, nevertheless, somewhat delicate and liable to get out of order. If the pit which contains the scale is damp the bearings rust and this interferes with the correctness of the result. If anything gets between the platform and the edge of the pit, in those cases where the weighing track rests upon the platform, the scale may bind. Various disarrangements may take place in the mechanism of the scale itself.

“A physical examination of the scale will frequently reveal defects of this character, and it is therefore essential, according to the testimony of all those who have given this subject special attention, that the scale should be kept as clean as possible and that a frequent inspection should be made by going into the pit of the scale. By such examination defects can be frequently observed and corrected. A track scale much in use should be inspected and balanced every day.

“In the past, in the majority of cases, the subject of inspection seems to have received very scant attention. One witness testified that he regularly inspected the scale

of which he had charge by looking through a crack in the platform, and this is a fair specimen of the manner in which that duty was often discharged. For this there is no excuse. It is not possible to have an expert in charge of every track scale, but if the scale is properly installed a person of ordinary intelligence can be readily taught to give it such care and examination from day to day as may be necessary, although this should be supplemented by an expert inspection at regular intervals.

"While an inspection of this kind is necessary and should never be neglected, since it may reveal sources of error, the only certain way to determine whether a scale is accurate is by a weighing test of the scale itself. This test is made in various ways, but comes finally to the same thing, and consists in putting upon the scale a known weight and then comparing the reading of the scale with that weight. The weight may be and is applied in various forms, but the most approved method and the one most generally in use is by the test car.

"For this purpose a car of short-wheel base, usually 6 feet 6 inches, is provided, so constructed as to vary as little as possible in weight. As a test car moves from point to point upon a railroad there is almost of necessity some slight change in its weight, due to various causes, like the wearing away of those parts which are subject to wear, the varying weight of the oil in the boxes, etc. It was said, however, that a proper test car, properly used, would not vary more than 50 pounds in a trip of two weeks.

"The testing of the track scale, when a proper test car has been provided, consists merely in placing the car upon the scale and noting whether it weighs that car correctly.

"In order to make certain of the correctness of the test

car itself, access must be had to a master scale; that is, a scale which has been tested by standard weights obtained from the Bureau of Standards maintained by the United States Government. There should be one such scale upon every considerable railroad system.

"Considerable was said at the various hearings as to the period which might properly elapse between tests of a track scale. Evidently much depends upon the care which is given the scale and the amount of work which is required of it. A scale subjected to continuous usage is, in the nature of things, more likely to wear out than one which is used much less frequently. The general opinion seemed to be, however, that all scales should be tested by the test car at least once in two months; in many cases every month.

"Our investigations show that comparatively few railroads were, when this proceeding began, provided with proper test cars, and that in even fewer cases were those cars put to frequent and efficient use.

"The railroad commission of the state of Minnesota is required by statute to weigh certain commodities, and has jurisdiction in that connection over the railroad track scales of carriers operating within that state. When that commission first began its inquiries into the accuracy of track scale weights and the operation of track scales generally by the carriers, no railroad in the state of Minnesota had a test car. The commission itself purchased one, and this has led the various carriers in that state to provide similar equipment for themselves.

"Certain railroad systems, of which the Santa Fe and the Pennsylvania are good illustrations, have given special attention to the correct scaling of cars, and to this end have attempted to install suitable scales, to keep these scales in order, and to make certain that they are accurate.

These railroads had at the beginning of our investigation test cars, but, broadly speaking, the test car was a thing, not unknown, but generally unused, and in a great measure this is still true.

"One of the subjects most discussed in considering the testing of scales was the degree of accuracy to which a track scale should be expected to weigh. Track scales are usually constructed to read within 50 pounds; that is, one notch upon the scale beam represents 50 pounds. The representative of one scale manufacturing company testified that in his opinion a scale could not be said to be in good order until it would indicate the variation shown by a single notch upon the scale beam. Upon the other hand, many of the carriers were of the opinion that any such degree of accuracy in a track scale was, as a practical matter, unattainable.

"We are satisfied that a modern scale, properly installed and kept in proper condition, should be accurate within at least 100 pounds, and that when under test it shows a variation of 100 pounds or more it should be considered out of order. It is not meant that the weight of the contents of a car can ordinarily be ascertained within 100 pounds by track scaling. In to that result many sources of error may enter aside from the inaccuracy of the scale itself, but in our opinion that particular source of error should not exceed the limit above named."

(3) Operation. "No matter how excellent the scale, how perfect the installation, or how painstaking the maintenance, if the operation be faulty the result is error. This record leaves no doubt that the methods employed in the use of track scales for the weighing of carload freight are such as would often produce gross inaccuracies upon the most perfect scales. These faults consist partly in the

way the cars are placed upon the scales for weighing, and partly in the recording of the weight itself.

"Cars may be weighed, and are habitually weighed, both in motion and at rest. They are sometimes coupled to other cars at both ends when weighed, sometimes coupled at one end and sometimes entirely uncoupled. Different carriers have different practices in this respect, and frequently the custom is different at different points upon the line of the same carrier. Upon no subject involved in this investigation has the testimony been so sharply conflicting as upon this. May cars be weighed in motion, or must they be spotted? May they be coupled when weighed at one or both ends, or must they be entirely uncoupled? These are the storm centers around which the fiercest discussion has raged.

"It would seem to be a self-evident proposition, and is the opinion of those witnesses who are best qualified to express one with no bias either way, that the ideal method of ascertaining the weight of a car is to place that car upon the scale, allow it to come to rest, remove everything from contact with it so that it stands alone upon the scale, and, having done this, take the weight. If the scales are accurate this will indicate upon the scalebeam the true weight of the car.

"It is claimed, however, that as a practical matter no element of error is introduced if this car be coupled to other cars at one or both ends. Undoubtedly in many cases, perhaps in the great majority of cases, if a car were placed upon scales so arranged that this could be done, coupled at both ends to other cars, and allowed to come to rest, the weight would be substantially the same as though uncoupled. This clearly would be so unless there were some pull up or down at one or the other end of the car. But it is equally manifest that the possibility of error

always exists if this car be attached to any other car by a coupling which is at all rigid or may be made rigid. The element of possible error is greater if the car be coupled at both ends than if it be coupled at one end.

"The length of most modern scales is such that cars can not be weighed coupled at both ends, especially if the cars are of the smaller sizes, since the scale is so long that the attached cars often stand upon one end or the other of the platform. The practice, therefore, of weighing cars coupled at both ends is not as common today as formerly; indeed, it seems to be at the present time comparatively rare when any serious attempt is made to accurately weigh the car. It is, however, still a very common practice to weigh cars coupled at one end, and the results of many experiments were introduced tending to show that no substantial error resulted from this method.

"These experiments have for the most part been conducted by the carrier, but there is no reason to doubt that they were honestly carried out and that the results are correctly stated. Nevertheless, we are not prepared to accept the conclusion reached, and the reason why will be best shown by an examination of one of these tests.

"The most extensive, and perhaps the most satisfactory of all tests of this character, was conducted by the Western Weighing and Inspection Bureau, and involved the weighing, light and loaded, of 10,000 cars in different parts of the territory covered by the operations of that bureau during various periods of the year 1912. The head of that bureau testified that he aimed to have this weighing done at points where competent weighmasters were in charge. The car was first placed upon the scales coupled at one end. After being weighed in this position it was uncoupled, so as to be entirely free, and again weighed. The weighmaster had particular instructions to see when the

car was weighed that it did not bind at the point where it was attached to the other car. Since the only error which can arise by virtue of the fact that the car is coupled is due to its binding with the car to which it is attached, and since in most cases, if proper attention is given, no such binding will occur, it follows that the source of error from weighing in this manner was largely eliminated by the way in which the test was made. The real objection to this method of weighing cars is that unless the very greatest care is taken there will be an up or down pressure at the drawbar, and that, as cars are ordinarily weighed in actual practice, the necessary attention is not given. An element of inaccuracy is introduced which is not liable to be guarded against when cars are weighed coupled, but the possibility of which is entirely removed when they are uncoupled. The question is not, 'Can cars be accurately weighed coupled at one end?' but, rather, 'Will they be so weighed as the operation is ordinarily performed,'

"An exhibit was filed giving the result as to each car, and an examination of this exhibit shows that in instances, although they are not numerous, marked differences occur between the coupled and the uncoupled weight. In one instance this difference was as great as 4,000 pounds. It appears, therefore, that even with the greatest care errors may result from this method of weighing. This test, in view of the manner in which it was conducted, convinces us that cars ought not to be coupled at either end when weighed, if this, as a practical matter, can be avoided; and that is also the fair inference from the entire record upon this point.

"Some few railroads still weigh cars in motion when coupled at both ends; that is, the train is drawn slowly across the scale and the weight of each car observed during its passage. This method of weighing aggravates all the

errors and sources of error which would be present if the car were spotted while coupled at one or both ends. While some of the witnesses introduced tables showing the result of experiments tending to prove that this method of weighing was accurate, the opinion of most of those qualified to form one, and the practice of all railroads where this subject has been given careful attention, condemns the weighing of cars in motion when coupled at both ends. That system of weighing may be fairly designated as a relic of the dark ages of track scaling.

"Many railroads have constructed at very great expense the most approved track scales, with a special view to weighing cars in motion. The best of these scales are provided with an arrangement called a mechanical hump, by which the car is slightly elevated and set in motion over the scale. By this method a uniform speed across the scale is obtained. The car is absolutely disconnected from all other cars, and experiments appear to show that when the scale is properly constructed and properly operated accurate results can be obtained. It would seem to be, in the nature of things, impossible to weigh a car while in motion with the same nicety that it can be weighed at rest, but it does appear that substantially accurate weights can be obtained in this manner.

"In actual life the ideal is not always attainable, and in practical railroad operation it may not be possible to weigh loaded cars by the most perfect method. The time and expense involved in these different methods of weighing must be considered. The testimony tends to show that there are instances where cars can only be weighed in motion and that there are other instances where it would impose a very serious burden if they were to be in all cases uncoupled. This record does not show the expense of weighing a carload of freight. The opinion

was expressed by one witness that it would cost 80 per cent more to weigh cars uncoupled than to weigh them coupled at one end. Today it is not so much a question of additional expense as of additional facilities. To require all cars to be spotted for weighing would render very extensive changes necessary at points where they could not well be made.

"Our general conclusion is that cars should never be weighed in motion coupled at both ends, that they may properly be weighed in motion when uncoupled upon scales especially designed for that purpose and in charge of thoroughly competent men; that cars should not ordinarily be weighed coupled at one end, and never unless at points where the greatest attention is paid to the condition of the scale and the competency of the weighmaster.

"The second source of error in the operation of track scales lies in the observance and recording of the weight actually registered by the scale. It is necessary for the weighmaster to identify the car, that is, to take its initials and number, to ascertain the net tare weight stenciled upon the car, and to also ascertain and record the weight of the loaded car, as shown by the scale beam. When the car is spotted and uncoupled there is usually sufficient time for doing this with care, so that only occasional error results; but when the cars move across the scales with comparative frequency the liability to error is very much increased. So great is this liability, and so many errors arise from the personal infirmity of the operator, that much thought has been given to the perfection of devices which shall eliminate this source of mistake. There are today two general classes of instruments for this purpose—the automatic and the mechanical self-registering device.

"The automatic device is attached to the scale beam,

and stamps upon paper, without the intervention of any human agency, the weight of the car as it would be recorded upon the beam itself. The only duty of the weigh-master is to identify the car of which the weight is taken. Assuming the device to be perfect in operation, the only liability to error arises from applying the weight recorded to the wrong car.

"With the mechanical self-recording device the operator observes the scale beam as the car passes across the scale or comes to rest upon the scale. When the beam is balanced he throws a lever-engaging mechanism, which records the weight as shown by the scale. Here the human element is present, since the operator must observe the moment at which the scale balances and throw the lever of the recording contrivance. The weight is recorded as of the moment when the lever is thrown, so that an error in observing the scale beam or in pressing the lever results in an erroneous weight.

"The advocates of these two contrivances have each much to say in favor of his invention. Scale makers who do not as a rule own the self-recording mechanism and who apply whatever one is desired generally agree that some device of this kind should be used, and such seems to be also the impression of most railroad men of experience in these matters. There is, however, no agreement as to what device is the best. If the automatic contrivances were absolutely reliable they would be superior, since the element of human error is entirely excluded, but the testimony indicates that this device is not absolutely reliable, or, at least, only within certain limits. Upon the other hand it is conceded that the mechanical self-recording instrument gives with absolute accuracy the weight shown by the scale when the contrivance is put in action by pressing the lever.

"Of 4,601 scales installed upon 93 of the principal railroads of the United States, 1,124 are equipped with the self-recording and 157 with the automatic device. It is significant that the Pennsylvania Railroad Company, at its Juniata scale, which is maintained at the highest possible state of efficiency and over which more cars are probably weighed annually than upon any other scale in the United States, after having tried both devices has discarded both and now weighs by hand. The reason given by the expert of that company was that at that scale the automatic instrument was not sufficiently accurate and the self-recording too slow.

"We wish to carefully avoid any apparent expression of approval or disapproval of these rival instruments. Much must depend upon the conditions under which the service is to be rendered, and there is nothing in this record from which an opinion could properly be formed. What we desire is to impress the thought that it is just as essential to provide a competent operator as to furnish a suitable scale, and that so far no device has been invented which will dispense with intelligence, faithfulness and ability upon the part of that operator. The weighmaster must be as fit as the scale, a truth too often overlooked at the present time."

(4) **Tare Weights.** "The weight of the contents of a car is determined by subtracting from the weight of car and contents as shown by the scale, the tare weight as stenciled upon the car. In some few instances the car is weighed both loaded and light, but in the great majority of cases this is impossible and the stenciled tare must be used. It is evident that even though the scale weight be accurate the result is error unless the tare weight of the car is also correct.

"The tare weight as stenciled is given in multiples of

100 pounds, and the stenciled weight is treated as correct unless the test shows a variation of more than 100 pounds from the marked tare. Under this definition of correct, probably at least 80 per cent, and very likely 90 per cent, of all stenciled tares were, at the beginning of this investigation, inaccurate. A great amount of testimony has been introduced upon this point, and pages might be filled with tables showing the results of actual tests made both by shippers and by carriers, but this would be unprofitable and is unnecessary. Minnesota is one of the few states in which the railroad commission exercises an actual supervision over track-scale weighing. The commission of that state conducted an exhaustive series of tests as to the accuracy of tare weights. There is every reason to believe that these tests were fairly made; the results accord with the general import of other tables introduced, and some of these results may be referred to as illustrative.

"Between April 16 and August 15, 1912, 10,967 cars were light-weighed. These cars were not especially selected but were all the cars which were unloaded during that period at certain points. No special pains were taken to see that the cars were clean or that they did not contain foreign substances. The cars were simply weighed under load and again weighed when unloaded in the same condition that they were received by the railroad and would be put back into service or delivered to another shipper for loading. They had contained just previously grain, hay, straw or coal. About three-fourths had been loaded with grain.

"Of these, 6,254 weighed more than the stenciled weight. The variation was all the way from a few hundred to 9,000 pounds, the average being 461 pounds to the car; 4,207 weighed less than the stenciled weight, the variation being

as high as 6,000 pounds, and the average 548 pounds; 506 cars out of the total number were correctly stenciled.

"It has been said that the above cars were weighed without any special attempt to see that they were free from foreign substances, the purpose being to weigh the car as it would be delivered by the railroad to a shipper for loading and might be loaded by him. Special pains were, however, taken with 3,516 of these cars to see that they were clean and contained no foreign matter which could increase the weight. The result of this was that 1,374 weighed more than the stenciled weight by an average of 352 pounds to the car, 1,778 weighed less than the stenciled weight by an average of 531 pounds to the car, while 364 cars were accurately stenciled.

"The Minnesota commission weighed many other cars at other times. The general result of most other experiments would show a greater variation than the figures above given, but we have selected these as made in the manner which, all in all, seems to be the fairest. The conclusion which should fairly be drawn from everything said upon this investigation is about that indicated by the above figures.

"Some of the causes of this erroneous stenciling of tare weights can be readily assigned.

"Most cars are of wood, or contain more or less wood. Such cars shrink in weight when put into service. This record does not show, nor in the nature of things would it be possible to show, exactly what such shrinkage amounts to. Plainly it must vary with the type of car and with the condition of the material out of which the car is constructed, but, generally speaking, it may be assumed that if the stenciled weight represents the actual weight when the car is weighed for stenciling at the point of manufac-

ture that car will weigh less at the end of six months or a year.

"The use of the car necessarily wears away certain parts of the material, and this produces some decrease in weight. Beyond a certain point, when parts begin to be restored, this tendency to decrease ceases, so that if a car were weighed in its normal condition two or three years after being put into service but little further decrease in weight on that account would take place.

"The repairing of cars tends to vary the weight. This is partly due to the fact that new parts are supplied in place of old parts, which have become worn, but mainly because the new part is frequently of a different type, which is heavier than the old type, as, for example, the insertion of a new drawbar or the application of a new brake beam. It seems probable that many of the most marked variations between the stenciled and the actual tare of the car are due to this cause.

"It is evident that no proper appreciation has been had of the importance of accurately stenciling the tare weight of cars. In some cases cars have been purposely stenciled above or below actual weight. In numerous cases no tare weight whatever is given, and several instances were reported where the stenciled weight upon one side of the car was different from that upon the other.

"It is probable that there may be some variation from week to week in the weight of the same car, especially when the car is made of wood. If the car is old and not thoroughly painted it will absorb a considerable amount of moisture. The opinion was expressed, although not supported by any actual test, that the tare weight of cars would vary as much as 1,000 pounds, according as the weather might be dry or wet.

"It should also be noted, and this is a matter of great

importance, that cars when loaded contain foreign substances. The previous load has not been properly cleaned out so that several hundred pounds are in the car when the new lading is made. It may sometimes be the duty of the shipper and sometimes of the carrier to clean this car, but evidently failure to do so may frequently result in errors of weight.

"It also happens that during the winter months cars are covered with snow, which adds to the gross weight of the car.

"There was considerable argument during the various hearings as to when the shipper and when the railroad benefited by the fact that the actual light weight differed from the stenciled tare. This question is most easily answered by stating the figures in a given case. Let it be assumed that the gross weight is 120,000 pounds, the actual light weight 40,000 pounds and the stenciled weight 38,000 and 42,000 pounds, respectively. The actual weight of the contents of the car, as compared with the weight ascertained by using the stenciled tare, is shown below:

$$120,000 - 40,000 = 80,000$$

$$120,000 - 42,000 = 78,000$$

$$120,000 - 38,000 = 82,000$$

"It will be seen, therefore, that whenever the stenciled weight is greater than the actual weight the shipper pays upon less than the actual contents of the car, while, when the stenciled weight is less than the actual weight the shipper pays on more than the actual contents; that is, when the car weighs more than the stenciled tare the shipper loses, while when the car weighs less than the stenciled tare the shipper gains.

"The carriers assert that inasmuch as the tendency of a car is to lose weight most cars will weigh less than the

stenciled weight, and that therefore in the past the shipper on the average has been the actual gainer and the carrier the loser. Upon the contrary, the shippers urge that, whatever might be expected, in point of fact cars as a rule actually weigh more than the stenciled weight, and that therefore the shipper has been the loser. Tables introduced by both parties tend to confirm the position of the one introducing the table. But all this is beside the mark. It is no satisfaction to one shipper who has paid on from one to five thousand pounds more than he should to be told that some other shipper has paid upon that much less, or that he himself may sometime be equally fortunate. Some method should be devised by which actual, not average, weights can be ascertained. Today the most prolific source of error in ascertaining the correct weight of the contents of a car by track scaling is found in the fact that the actual light weight does not at the time of the weighing agree with the tare stenciled upon the car."

(5) The Weighing of Special Commodities.

1a. Grain. "Grain usually moves from the field to the country elevator and from the country elevator to some primary market. Presumably the grain is weighed at the country elevator, where it is received from the producer, but the manner of these weights and their effect is not detailed in this record. At the primary grain market it is usually weighed by some elevator. As a rule the scales and weighmaster of this elevator are under the supervision of a chamber of commerce, or, sometimes, of the state or municipality itself.

"Generally speaking, these elevator weights are accepted by all parties in the merchandising of this grain, and are also accepted by the railroad in assessing its freight charges, although it appears that in some instances railroads rely for their charges upon track-scale weights.

"Elevator weights are usually accurate, and comparatively little complaint has been received from the handlers of grain of erroneous weights. In one or two instances complaints have been registered that the quantity of grain weighed out of the car does not correspond with the amount of the invoice, which is also the amount upon which freight charges are assessed.

"Flour and other grain products are usually shipped in packages containing a certain number of pounds, and the weight of the contents of the car is ascertained for the purpose of assessment of freight charges by counting the number of packages. If there are instances where track-scale weights are used in assessing freight charges against grain products, that has not been brought to the attention of the Commission.

"Generally speaking, at the present time but little complaint exists as to the weighing of grain and grain products."

1b. Complaint of Chicago Board of Trade. "Reference may be here made to a matter presented to the Commission by the Chicago Board of Trade.

"Owing to the great extent of the city of Chicago and the location of the different elevators within that city, it is not feasible to receive all grain which is intended for city consumption from the elevators. A very large amount of grain must be unloaded upon team tracks, and the present practice is to weigh this grain in the wagon upon platform scales.

"These scales are owned and operated by the railroad, and shippers allege that the weights so ascertained are not accurate.

"The reason for this was found by the witnesses in several circumstances.

"It was said that the grain in being unloaded from the car into the wagon was almost invariably spilled to a

greater or less degree, so that a distinct loss in weight occurred from this cause between the car and the scale.

"It was also said that the scale was carelessly and improperly operated by the railroad employee and that it was not properly tested and inspected.

"There was the still further allegation that proper supervision was not exercised by the weighmaster in observing whether the wagon contained the same number of persons or the same person when weighed empty and light.

"The result of all this has been that cars unloaded upon the team track and weighed in this manner invariably show a considerable shortage. The average amount did not appear. This in turn has created a prejudice against the team-track market, so that grain habitually sells for less, frequently for as much as 2 cents per bushel less, when for team-track delivery than when for elevator delivery. Those merchants in Chicago who operate through the team-track delivery urge that these conditions are burdensome and should be removed.

"It was stated in behalf of the Chicago Board of Trade that that organization was willing to take over the inspection and operation of these scales, and the desire of both shippers and commission men seemed to be that this arrangement should be made. The thought was expressed that under such an arrangement close supervision could be exercised not only over the weighing but over the unloading of the grain itself.

"The railroads at the present time make a charge of 10 cents per load for this weighing service, and the Board of Trade would expect, if it took over the operation of these scales, to make and retain this same charge. It was stated that a considerable deficit would undoubtedly occur to the Board of Trade notwithstanding this arrangement, but that that organization was willing to undertake this

task, just as it now supervises the weighing of all grain handled through elevators in the city of Chicago, inasmuch as certain members of the Board dealt in this team-track grain.

"It is evident that there is usually a shortage in the weight of cars of grain unloaded upon these team tracks, and this seems to be due partly to carelessness in the handling of the grain and partly to improper scaling. For negligent unloading of the grain the carrier is not responsible, but for the weighing it is. It occurs to us that the Board of Trade might well be given jurisdiction over these platform scales, which are extensively used for the purpose named, in the same manner that it has jurisdiction over all other scales by which grain is weighed in that market. This certainly would relieve carriers from all criticism, and might incidentally enable the Board of Trade to exercise some supervision over the handling as well as the weighing of the grain in the interest of its members.

"Something was said as to the reasonableness of the charge imposed by the carriers for the weighing, but the Commission can make no order touching that matter in this proceeding, and will not therefore express an opinion."

2a. Coal. "The tonnage of coal exceeds that of any other commodity, and the proportion which the freight charge bears to the value at destination is greater in case of coal than with any other article of general consumption. The weight ascertained by the carrier upon which freight charges are computed is usually the weight used by the mine owner in billing to his customer. It is therefore especially important that the weight of this commodity should be correctly ascertained.

"There is a great variety of method in the weighing of coal. A representative of the Louisville & Nashville stated that upon his line the mines as a rule owned no

scales, the coal being weighed upon the scales owned and operated by the railroad. These scales are not at the mine but are usually in close proximity, and it was said that coal is seldom hauled 50 miles before being weighed. The weight is communicated to the mine owner, who accepts it as correct and invoices his coal upon that basis. This witness testified that upon the Louisville & Nashville coal was weighed in motion, with the cars coupled at both ends, and that both the railroad and the mine owner declined to vary from the weight so ascertained.

"This witness stated that the method pursued upon the Louisville & Nashville was that ordinarily in use in territory south of the Potomac and Ohio and east of the Mississippi. He did not say definitely, however, whether the ordinary rule was to weigh cars in motion and coupled, as upon his line.

"It frequently happens that coal is not weighed until it has moved a considerable distance from the mine. The Norfolk & Western weighs its coal for Central Freight Association territory for the first time at Portsmouth. Tidewater coal at Norfolk, Baltimore, etc., is weighed at the port, and the weight so ascertained governs. Perhaps in the majority of cases the coal is weighed at the mine, either upon scales owned and operated by the railroad or upon those installed by the mine owner, but operated under the supervision of the railroad. In the anthracite regions the scales are located near the collieries, but seem to be uniformly owned and operated by the railroad.

"Ordinarily the car is not light-weighed before being loaded, but sometimes it is, and this seems to be the rule in the anthracite regions. In all cases the weight of the coal, when ascertained, is communicated at once to the mine owner, if not already known, and is the weight upon which the coal is sold and the freight charges are assessed.

Both the mine owner and the railway insist upon these weights as ascertained at the point of origin.

"More complaint exists as to the weighing of coal than with any other commodity except lumber. The oft-repeated allegation was that the coal did not weigh out up to the billed weight, the shortage being from a few hundred to several thousand pounds. There was an earnest demand for some change in the system of weighing coal, which usually resolved itself into a demand for destination weights.

"It is manifest that this Commission can have no control over the contract between the coal producer and his purchaser. If the mine producer insists that his contract of sale shall provide for mine weights, we can not control that action. We can, however, see to it that freight charges are assessed upon actual weights, and that the rules under which those weights are ascertained are correct.

"The weight of coal at destination does not necessarily correspond with its weight at the mine. If coal is not properly trimmed when loaded it is liable to fall from the car during transportation. Coal is also subject to extensive pilfering en route, being ordinarily shipped in open cars, frequently through sections which are densely populated, and being an article of universal necessity. We have nothing before us from which any reliable estimate can be made as to the amount of loss due to the falling of coal from cars en route or to pilfering.

"There may also be a substantial change in weight between the time the coal leaves the mine and its arrival at destination, due to evaporation. The coal is frequently wet at the mine in the process of mining or preparing for shipment, and the drying out of the water lightens the weight of the car. In case of washed coal an allowance

on this account is frequently made. The coal itself as it comes from the mine sometimes contains considerable quantities of moisture, so that a carload of coal, like a carload of lumber, would lose in weight by drying out if it stood in the hot sun or was kept for any length of time in a dry climate. An account was given of some experiments which tended to show that with certain western coals standing in open cars in the hot sunshine for 25 days the loss in weight owing to evaporation of moisture was from 4 to 22 per cent. Other coals lost 2 per cent in 10 days and 4 per cent in 25 days. It can hardly be expected, therefore, that the weight at destination would exactly correspond with the weight at the mine, but there ought to be some fairly uniform percentage of shrinkage according as the coal is produced in various sections and moved under various conditions.

"It seems proper for a railroad company to provide in its tariff that the weight as ascertained at point of origin shall govern, unless shown to be incorrect within such measure of tolerance as may be properly fixed. Where the commodity varies in weight during the transportation it may provide that the weight so ascertained shall govern irrespective of the destination weight. It can not, however, provide that an incorrect weight, no matter when ascertained nor where ascertained, shall control. If that weight is shown to be incorrect it must give way to one which is correct. If, for example, the nature of the coal is such that in course of transportation its weight will not vary, and if the carload at destination does not weight in fact what it is said to have weighed at the point of origin, this must show conclusively that the weight at the point of origin was incorrect, assuming always that the destination weight has been so ascertained as to leave no doubt as to its correctness.

"Where coal is wet in process of preparation for shipment so that the moisture does not become at any time a part of the coal itself but soon evaporates, there would seem to be strong reason why a proper deduction should be made from the weight as ascertained at the mine. When the moisture is a part of the coal itself, even though it subsequently evaporates, the carrier may properly require that the weight at the mine shall govern. When coal falls from the car or is lost by pilfering the carrier ought to be held responsible, since the falling from the car is due to improper loading, and the pilfering is a loss against which the railroad must stand responsible.

"The difference in conditions in different parts of the country and of different coals is such that no general rule can be laid down. In our opinion, if some method can be adopted by which the weight of the coal at the mine is accurately ascertained and by which proper loading can be secured, the greater part of the present complaint, so far as it is well founded, will disappear. There should probably also be the right upon the part of the shipper to demand a reweighing of this and every other commodity under proper restrictions. When possible, the car should be weighed light before being loaded or after being unloaded."

3a. Lumber. "Lumber is generally sold by the thousand feet, and the weight is not therefore an item of significance in determining the invoice price. The freight rate is, however, a very important part of the value of the lumber at the point of final destination, being frequently nearly as much as the lumber itself in case of the coarser grades. It is therefore a matter of great importance to all parties concerned that the weight upon which the freight charge is assessed should be accurate.

"The rate of freight upon lumber is almost uniformly

named by the hundred pounds, and the weight upon which that freight is assessed is universally determined by track-scale weight. The car is weighed at the point of origin, or as near as possible to that point, and the weight so established governs unless corrected. Almost all shipments of lumber are weighed a second and frequently a third time, and the allegation of lumber shippers is that if these subsequent weighings show more than the original weight the weight is advanced, while if they show less no change is made in the original weight. While this was denied by the carriers, the evidence indicates that in many cases at least the claim is correct.

"More complaint has been received touching the weighing of lumber than with any other commodity, and perhaps more difficulty is experienced in the settlement of claims filed with carriers by shippers on this account than in case of any other commodity. Some of the reasons are these:

"Different kinds of lumber differ greatly in the weight of a thousand feet. The same kind of lumber in the same state of dryness does not always possess an absolutely uniform weight, and it is common knowledge that green lumber shrinks greatly in weight in the process of drying. Thoroughly dried lumber, if exposed to the atmosphere, especially if exposed to the elements in an open car, will absorb moisture and increase materially in weight. Lumbering operations are often conducted in northern latitudes where snowfalls are frequent during the winter. The accumulation of snow and ice upon the car adds to its weight and thereby tends to increase the weight of the car beyond its stenciled capacity.

"Many carriers, realizing the imperfections of the scale weights, have been accustomed to recognize claims for errors in weight very readily. The shipper would state that so many thousand feet of a certain kind of lumber

of a certain state of dryness had been shipped, and this lumber in that condition would weigh a certain amount per thousand feet. Upon this basis the alleged overweight was corrected.

“Upon the other hand, some carriers have insisted that scale weights must govern and that they would under no circumstances correct an alleged mistake in weight upon the basis of an estimated weight. The varying practices of different railroads in this respect have led to friction between carriers and shippers and have undoubtedly resulted in discrimination as between different shippers, and certainly as between different railroads. It seems clear that some method should be devised by which the true weight of this commodity can be more accurately ascertained.

(6) **General Rules.** “Under this title reference will be made to certain rules and practices of the carriers, the effect of which is to exempt large amounts of carload freight from all weighing whatever. Railroads have generally organized weighing and inspection bureaus possessing jurisdiction over certain territorial limits. One of the duties of these bureaus is to supervise and correct the weighing of carload freight. These bureaus enter into an arrangement with certain shippers by which the weight certified by the shipper to be correct is so accepted by the carrier. The agreement is in writing, and provides that the shipper shall furnish a correct weight, that he will pay any additional charges which may be due owing to the underweight if the weight furnished by him is subsequently corrected, and agreeing to allow the carrier at all times access to all records, invoice books and papers of the shipper pertaining to the weights of the cars shipped.

“These agreements cover package freight put up in standard packages where the weight is determined by

counting the number of packages shipped in a particular car. They also cover freight which must be weighed ordinarily in the car by some one. This weighing is done upon the scales of the industry, which in such cases are under the inspection of the weighing bureau, and may at any time be tested by the representative of that bureau. It sometimes happens that the bureau itself appoints the weighmaster, who is paid by the industry.

"The checks possessed by railroads against underweighing by this practice appear to be twofold.

"In the first place the weighing bureau frequently reweighs such cars, comparing the result of such reweighing with the weight as furnished by the shipper. While this is not an accurate test, since the weight as given by the shipper in the absence of intentional fraud would generally be more accurate than that obtainable by the railroad from ordinary weighing upon track scales, still it serves in a rough way to check the correctness of the shipper's weight.

"Secondly, and in the main, the representative of the weighing bureau may at any time examine the books and records of the shipper, and by this means can usually determine whether the amount charged against the customer corresponds with the amount rendered to the carrier.

"The present investigation has not been of a character to develop any fraudulent practices which may exist under this system. We have endeavored to ascertain whether complaint of discrimination exists, either on the ground that the privilege is accorded to some and denied to others or in the administration of the agreement itself. No such instance has been found. Apparently the special agreement is extended to all shippers who desire to execute it in certain lines of business and under certain circumstances

without distinction. On the whole, so far as we have been able to obtain information, this system is satisfactory to shippers, and, if honestly conducted, tends to secure more accurate weights than could be secured by the ordinary methods of track-scale weighing.

"These special agreements are not, apparently, referred to in the tariff, but all the inspection bureaus publish lists of the individuals, firms or industries with whom such agreements are in force, so that the public is reasonably informed of what is taking place. Where such an agreement is in force in one weighing district, the weights as furnished by the shipper are ordinarily but not uniformly accepted in other inspection districts. Of course, the bureau in the district where the traffic originates or any carrier in any other district is free at all times to examine into the correctness of the weight of a particular shipment, and if found incorrect to advance the shipment to its true weight, and this seems sometimes to be done.

"Two or three general rules incorporated in the tariffs of the carriers refer to weighing and have been made the subject of complaint. The first of these is what is known as 'tolerance.'

"It will be readily appreciated that the exact weight of the contents of a car can not be ascertained by the use of track scales. We have already seen that the scale itself should be regarded as accurate until an error of at least 100 pounds is shown. We have further seen that the tare weight of the car is stated in multiples of 100 pounds, and is treated as correct until an error exceeding that amount appears. It has also been noted that some of the coarser commodities which are most frequently the subject of transportation shrink several hundred pounds in transit. From these and other causes it is admitted on all sides that there must be a limit of error within which the

ascertained track-scale weight of a carload of freight shall be deemed to be correct. This limit is known as tolerance, and is in most jurisdictions 500 pounds, but in the jurisdiction of the Western Weighing Association and Inspection Bureau, which covers most territory on the west of the Mississippi River, and east of the Pacific Coast states, is 1,000 pounds.

"In our opinion 1,000 pounds is too great. In case of a commodity which only loads 20,000 pounds to the car, and there are many such, it means a twentieth of the entire loading. This is a very significant item in the assessment of the freight charges, and is even more significant when the question is whether the carrier has delivered the full carload to the consignee. Even in case of coarser commodities, like lumber and coal, weight should be more accurately ascertained than is contemplated by this measure of error. If one tolerance is to be fixed for the weighing of all commodities, 500 pounds would seem to be large enough.

"It has been suggested that the measure of tolerance should vary with the character of the commodity transported. Evidently accuracy in the matter of weight becomes important in proportion to the value of the article, when the question is as to whether the entire carload has been delivered, and in proportion to the amount of the rate, when the question concerns merely the assessment of freight charges. No workable rule has, however, been suggested upon this basis; on the whole there seems to be among shippers very little objection to a tolerance of 500 pounds, and we think this may fairly be regarded as reasonable.

"In saying this, however, we have in mind only those articles which have been referred to in this investigation,

and the expression of this opinion is not to be taken as covering commodities and conditions not before us.

"One instance has come to the attention of the Commission where the tariff of the carrier provided that the weight ascertained upon a particular scale should govern, and it is frequently provided that weights at points of origin will govern.

"Tariffs of this character are unreasonable. The shipper should be required to pay upon the actual weight. To assess freight charges upon any other than the actual weight is to impose a rate either too high or too low and to discriminate between different shippers. A carrier may not provide that the weight of a particular scale shall govern, whether that scale be accurate or inaccurate, for the question is always, What is the actual weight of this shipment within reasonable limits as above indicated?

"Neither is it proper to provide that weights at either the point of origin or the point of destination shall govern, unless those weights are correctly taken; that is, such a tariff would be unreasonable unless the shipper were permitted to show by reweighing or by other means that the weights at the point of origin were inaccurate.

"Neither can the carrier by this means exempt itself from liability to the shipper for loss of property in transit. He can only properly provide against that variation in weight which may actually be supposed to occur during the transportation and for such measure of possible error as is reasonable in the premises.

"Another rule of the carriers provides that where a shipper asks for the reweighing of a carload of freight he shall pay 50 cents, where the weighing is upon the scales of the shipper and \$1.00 where the weighing is upon the scales of the carrier. Shippers object that where the weighing is upon the scales of the shipper, no additional charge should be made in any event, but the carrier is

obliged to spot the car and it can hardly be said that a charge of 50 cents for this service is unreasonable.

"It is further objected that no charge whatever should be made when the weighing is rendered necessary by the act of the carrier; that is to say, if the shipper asks that the car be weighed because it is his belief that the original weight was improper, he ought not to be required to pay for the reweighing if it turns out that he was correct. The tariffs of some carriers now contain a rule to that effect, and in our opinion the tariffs of all carriers should provide that where a reweighing is requested by a shipper and such reweighing shows error beyond the limit of tolerance fixed no charge shall be made for that service.

(7) Remedies. "The ultimate purpose of this proceeding was to correct, in so far as might properly be done, such faults as were revealed, and the final inquiry is, To what extent and by what means can the defects in railroad track scales and their use which have been exhibited by the evidence in this record be remedied?

"At the outset it may be observed that, while this investigation has occupied much time and has been conducted at considerable expense, the results already accomplished much more than justify the outlay. It became evident upon the very first hearing that the matters under consideration had never received proper attention at the hands of the carriers. The importance of the subject had not been appreciated. In the hurry and press of other things scales had been overlooked. No sooner was the matter mentioned than railroads in all parts of the country realized that they were exceedingly vulnerable at this point, and the process of betterment at once began.

"What has happened in case of one important system is an apt illustration. The reputation of that company for excellence in maintenance and operation is among the best,

yet it appeared that in the matter of track scales it was deficient. Its scales were few in number, improperly installed and inefficiently operated. It would seem that the management of this great company had for some unaccountable reason overlooked the importance of this basic subject; but no sooner had these conditions been revealed than all this was changed. A department having charge of this subject has been created with a competent man at its head and with the means to do what is necessary. Old scales are being improved, new scales are being installed, test cars have been contracted for and will be put into regular service. In the near future it seems evident that the track scales of that company will comport with the balance of its structures and their operation will be on a plane with the rest of its operations.

“What has taken place upon that line is taking place, usually in a less degree, upon many lines. Returns which carriers were required to furnish show that those companies whose scaling devices were defective—and that includes the greater part of the railroad mileage of the United States—are generally installing new scales and rebuilding those now in service. New rules have been adopted for the light weighing of cars, and there is everywhere evidence that if nothing further were done very material improvement would be made. There are, however, many railroads which will not be disposed to bring their scale equipment up to a proper state of efficiency.

“It is not to be expected that all the railroads of this country will be equipped with theoretically ideal scaling devices. To require this would be unreasonable, but such devices are among the most important of the appliances of a railroad, for they virtually determine the charge which the shipper is to pay and the railroad to receive.

“The cost of installing a track scale is not extravagant,

only a few thousand dollars to a single scale; the maintenance of the scale when installed is not costly, nor does its operation involve the employment of highly paid expert labor. In view of the importance of the subject and the comparative ease of proper attainment, it is not unreasonable to require, by mandate of the government if necessary, that the railroads of this country provide reasonably accurate track scales and maintain and operate those scales with reasonable efficiency and accuracy. How is this end to be secured?

"The first thing is to secure the proper installation of a proper scale, and, when once installed, the maintenance of that scale in proper working condition. This will be done in many cases by railroads of their own accord, for it is as important to them as to the shipping public that the scales by means of which their freight charges are determined should be accurate. But it is not possible to rely entirely upon voluntary action. In some form governmental authority must be able to require what is not voluntarily done. There are few, if any, municipalities in our whole country where the government does not in some form test and supervise the scales used for commercial operation. It is just as essential, in some respects more essential, that this should be done as to railroad track scales, since the weighing is almost never in the presence of or under the direction of the shipper affected by it, and an error of weight is often unnoticed, and if noticed most difficult to substantiate or correct.

"Assuming that in some form the government must exercise authority over the installing and the testing of track scales, should this be done by the state or by the nation? It is evident that this duty is eminently local in its character. So far as the states see fit to undertake this work it can perhaps better be done in that way than

through the exercise of federal authority, and the different states should be encouraged to assume and exercise an actual jurisdiction in this particular.

"At the present time some few states do this. The Railroad Commission of Minnesota is directed by statute to weigh the hay, straw and grain which is sold in that state, and incidentally is given authority over the installation, maintenance and operation of railroad track scales. That commission, in the exercise of this jurisdiction, has done most excellent service. The same is true of the states of Oregon and Washington, and to some extent of other states. Numerous states have invested their commissions with this power, and undoubtedly it will be exercised to a much greater extent in the future than it has been in the past.

"It is not probable, however, that this will be done by all states, and it will therefore be necessary for the federal government to exercise its authority in many cases. In our opinion some federal tribunal, perhaps this Commission, should be given authority in the following respects:

"(a) To fix the points at which track scales shall be installed; (b) to prescribe the standard of such scales and their installation; (c) to test or supervise the testing of such scales; (d) to supervise the operation.

"It is not suggested that the federal authority should actually test all the track scales of this country, much less provide the necessary apparatus for that purpose. The statute should require carriers themselves to install proper scales and properly maintain and test them, and should invest the federal tribunal with authority to make necessary rules and regulations to the securing of this end. The government should determine the kind of apparatus with which these scales are to be tested, the manner of the testing, the frequency with which the test shall be

made. It should require a report of such tests and should have authority to make and supervise tests when it saw fit. The expenditure of a comparatively small amount of money would secure the installation and maintenance of adequate scaling facilities upon the railroads of the United States, and it is doubtful if a given amount of money could be more profitably expended in any other way in the regulation of these public agencies.

"After the proper installation and maintenance of track scales comes their proper operation, since error may and does frequently result from this source. It has been already observed that there are two sources of such error, of which the first is the improper placing of the cars for weighing. Here, as in the installation of the scale, most railroads may be relied upon to see to it that cars are properly placed, but if the full benefit of an accurate scale is to be had the government must be able to prescribe the manner in which that scale shall be operated. To this end it must have authority to lay down general rules for the placing of cars when weighed; that is, to determine whether they shall be weighed in motion or at rest and whether they shall be coupled at one or both ends or entirely disconnected from other cars. The opinion has been expressed that upon a scale properly constructed and under proper conditions of operation motion weighing may be done with practical accuracy, and the authority should therefore extend to the prescribing of the particular cases, or rather the particular classes of scales upon which cars may be weighed in a given manner.

"The second source of error is in properly balancing the scale and in transferring the record from the scale, and this depends upon the person who does the weighing. To what extent should the weighmaster be under government direction?

"We have seen that elevator weights of grain are usually accepted not only for the assessment of freight charges, but in the merchandising of the grain itself. As a rule the weighmasters in elevators are appointed by some chamber of commerce, municipality, state or other public authority, it being recognized that where the weights are to be accepted and acted upon by persons who can not be present at the weighing the weighmaster ought not to be an interested party, but should rather be a representative of public authority. It is our impression that, while the weighmaster is appointed by some public authority, he is usually paid by the individual requiring his services.

"We have seen that the carriers themselves form associations for the supervision of the weighing of freight. This is partly for convenience and partly to prevent discrimination by improper collusion between railroads and shippers. These associations appoint the weighmaster, even though his services may be paid for by some individual railroad company or some industry.

"If the government is to supervise railroad scales with a view to obtaining accurate results, the authority must apply not only to the scale but also to its operation, and in that the weighmaster plays the most conspicuous part. We do not suggest that all weighmasters should be appointed or licensed by the government, but we do think that there are points at which, and perhaps circumstances under which, official weighmasters should act, and that the power should exist to appoint such persons and determine their sphere of action.

"We have seen that one of the most prolific sources of error is the wrong stenciling of the tare weight of cars. A car may undoubtedly vary somewhat in weight from week to week, according to climatic conditions, and therefore, when possible, the car should be weighed both light and

loaded at that end of the route at which the weight is to govern. This, however, in the great majority of instances is impossible. The stenciled tare weight must be accepted, and it is extremely important that this weight should be as accurate as possible. While the stenciled weight never can be made absolutely accurate, there is no excuse for the wide element of error which now exists.

"It is apparent that the only means of correcting an erroneous stenciled weight is by a proper reweighing of the car, and carriers generally concede that if it were practicable a reweighing ought to be had at certain definite intervals. Some railroads have today in effect a rule requiring all cars to be reweighed, usually within a period of two years, but such rules in the past have been mainly honored in the breach. It is insisted that no similar rule can be properly observed, since no carrier under the system of car exchange now in vogue can hope to have upon its road every two years its entire car equipment.

"If it be assumed that cars can only be weighed light and restenciled by the road owning the car, then certainly it would be extremely difficult to secure a reweighing every year or every two years even, but if the suggestions already made are adopted there is no necessity that every railroad should light-weigh its own cars. If scales are located at proper places which are tested and operated by government officials there would seem to be no reason why the tare weights of cars might not be corrected upon these scales, and in this event it would be comparatively easy to test the tare weight of every car at least once in two years.

"In our opinion the following rules should be adopted: (a) Reweigh every car within one year from the date when it is put into service; (b) reweigh every car after it under-

goes substantial repairs; (c) reweight every car at least once in two years.

"The transaction is usually closed before the dispute as to the weight of a shipment begins. The car has been unloaded and gone; there is no way in which the truth of the matter can be determined and this leads to much friction and hard feeling.

"Take, as an illustration, the shipment of a carload of lumber from some southern point of production to a northern point of consumption. This lumber is sometimes and perhaps usually sold f. o. b. destination. The consignee pays the freight upon the arrival of the lumber, deducts that amount from the invoice and remits the balance.

"Suppose, now, that the car is weighed at point of origin, en route it is reweighed and advanced 5,000 pounds. The shipper has no knowledge of this advance until he receives remittance from his vendee, when it is too late to examine into the circumstances of that particular case.

"What applies to lumber applies, in perhaps a less degree and with less frequency, to various other commodities. Much trouble would be avoided if the interested party could be notified before the car was received and unloaded of exactly the amount upon which freight charges were to be assessed and given an opportunity to make whatever claim he desired in respect to weight before the unloading of the car. This would be not only a matter of justice to the shipper but would be a protection to the carrier itself against unreasonable claims on account of excessive weight.

"In our opinion every carload of freight, where track scales are relied upon to determine the weight upon which freight charges are to be assessed, should be weighed within 50 miles of the point of origin ordinarily. The

result of this original weighing should be at once communicated either to the consigner or the consignee, as the parties may direct. If, now, during the subsequent course of the shipment the weight of this car is advanced, the same party should be at once notified by telegram. Carriers complain that there is no way in which to ascertain the name of the party to be notified, but certainly this is a matter of detail in the working out of which no substantial difficulty can be experienced. They also say that it is an undue hardship to require them to send a postal card, and much more a telegram to the party affected, but it occurs to us that if the carrier has made a mistake in the original weighing, which it is now proposed to correct and which may materially affect the financial interest of the shipper, the very least that can be done is to at once advise the interested party by wire.

“If the party notified so elects, he should be permitted, without any expense to him, to require a third weighing of that car. The mere fact that the railroad has weighed it twice with a different result raises a presumption of error which should fairly require the carrier to resolve the doubt at its own expense. In such case the shipper should also be allowed, without liability to demurrage charges, a sufficient time in which to examine into the weight of the car before it is unloaded. If no claim of overweight is made before the unloading then no such claim should be entertained at all.

“What is said as to reweighing at the expense of the railroad does not apply to instances where a reweighing is requested by the shipper for other reasons than because the car has been check-weighed by the carrier and the first weight found wrong. If the shipper for his own purposes requests a second weighing, there is no apparent reason why he should not pay a reasonable sum for this service,

unless it appears upon such weighing that the original weight was erroneous and that the shipper was therefore justified in asking that the car be reweighed.

"No attempt will be made at this time to enter upon any discussion or to make any suggestions as to most of the rules which should govern the weighing of freight and the correction of incorrect weights. Representative shippers have this matter under consideration with the carriers, and it is expected that as a result of these conferences satisfactory rules will be formulated. If not, the matter will be further proceeded with by the Commission, and any particular rule can be made the subject of complaint.

"Neither do we here attempt any suggestion as to the standards under which track scales should be installed and maintained. This matter has, since the beginning of this investigation, been taken under advisement by the American Railway Association, and we are informed that such rules will in the near future be promulgated by that body. When formulated, their adoption and observance is, of course, voluntary with the railroads in the present state of the law. The purpose of this report has been to point out in a general way the wrong existing, and to suggest in the same general way the remedy. Matters of detail should be disposed of as they subsequently arise."

CHAPTER II.

WEIGHTS AND WEIGHING—(Continued).

§ 1. National Code of Carload Weighing and Reweighing Rules.

- (1) Rule 1—Supervision of Scales.
- (2) Rule 2—Weights—By Whom Ascertained.
- (3) Rule 3—Weights—How Ascertained.
- (4) Rule 4—Weights—Where Ascertained.
- (5) Rule 5—When Cars May be Reweighed.
- (6) Rule 6—Notification.
- (7) Rule 7—Information to be Shown on Scale Record, Weight Certificate, Waybill, Freight Bill, Etc.
- (8) Rule 8—Weights to Govern and Tolerance.
- (9) Rule 9—Charges for Weighing and Reweighing.
- (10) Rule 10—Weight Agreements.

§ 2. Minimum Weights Defined.

CHAPTER II.

WEIGHTS AND WEIGHING—(Continued).

§ 1. National Code of Carload Weighing and Reweighing Rules.

On June 9, 1914, the Interstate Commerce Commission approved a National Code of Rules Governing the Weighing and Reweighing of Carload Freight, promulgated by the American Railway Association and endorsed by the National Industrial Traffic League, as follows:

INTERSTATE COMMERCE COMMISSION.

National Code of Rules Governing the Weighing and Reweighing of Carload Freight.

"The American Railway Association has adopted the code of rules governing the weighing and reweighing of carload freight reported by its Weighing Committee, and recommends that it be made generally applicable on interstate traffic. These rules have been considered and approved by the National Industrial Traffic League. The Interstate Commerce Commission, recognizing the great benefits to be derived from uniformity in weighing and reweighing rules, is desirous of lending its influence to the movement. The Commission, therefore, indorses the rules governing the weighing and reweighing of carload freight adopted by the American Railway Association and recommends that they be made effective on interstate transportation throughout the country.

"This action, of course, is subject to the right and duty of the Commission to inquire into the legality or reasonableness of any rule or rules which may be made the subject of complaint.

"By the Commission.

(Seal)

GEORGE B. MCGINTY,
Secretary.

"Washington, D. C., June 9, 1914."

National Code of Rules Governing the Weighing and Reweighing of Carload Freight.

Introductory Paragraph.

"These rules do not change or amend the rules, minimum weights or estimated weights provided in tariffs, or the classifications governing the tariffs, nor the rules and regulations of the individual lines as filed with the Interstate Commerce Commission.

(1) **Rule 1—Supervision of Scales.** "When weights obtained on railroad or private scales are used for the assessment of freight charges, such scales shall be maintained, tested and operated in accordance with the Track Scale Specifications and Rules approved by the American Railway Association.

(2) **Rule 2—Weights—By Whom Ascertained.** "Weights should be ascertained by competent employees after proper instruction and under proper supervision.

(3) **Rule 3—Weights—How Ascertained.** "Section A. When track-scale weights are used for the assessment of freight charges, weighing must be done by or under the supervision of the carriers or their representatives or under properly supervised weight agreements.

"Section B. Cars may be weighed at rest:

"(1) When uncoupled and free at both ends.

“(2) When coupled at one end and free at the other end, only at points where the scale rails are level and approach rails level for a distance of 50 feet, and when the scales are kept in first-class condition.

“Section C. Cars may be weighed in motion, only when uncoupled and free at both ends and alone, upon scales properly designed for weighing in motion and in charge of a competent weighmaster.

“Section D. Cars loaded with long material extending from one car to another may be weighed coupled at rest. They may also be weighed coupled in motion on scales of sufficient length to properly weigh together the cars so coupled.

“Section E. When the actual tare of a car has been ascertained immediately before loading, it shall be used in lieu of the marked tare, except as provided in Section F.

“Section F. If a loaded car, upon arrival at destination, is weighed and the actual tare is ascertained after the entire lading of the car has been removed, including all packing and the debris resulting from that lading, it shall be used in lieu of the marked tare. If the car is reloaded by the consignee, actual tare obtained in like manner may be used.

“Section G. The marked tare should be used to arrive at the net weight of the load, except as provided in Sections E and F of this rule.

(4) Rule 4—Weights—Where Ascertained. “Carload freight should be weighed at point of origin, or as near thereto as practicable.

(5) Rule 5—When Cars May be Reweighed. “Section A. When the lading has been transferred en route, where car has met with an accident, or where for other reasons there is evidence of loss in transit, the carriers will, when practicable, reweigh the car.

"Section B. Carload freight may also be reweighed en route or at destination for the information of the interested carriers and to test the accuracy of the previous weighings. (See Rule 8.)

"Section C. When request is made by consignor or consignee for the reweighing of any car, such reweighing shall be done, whenever practicable, the car to be weighed again if necessary—subject to Rule 9.

(6) Rule 6—Notification. "Upon request the consignor will be furnished with the gross, tare and net weights and all changes made therein.

(7) Rule 7—Information to be Shown on Scale Record, Weight Certificate, Waybill, Freight Bill, Etc. "Section A. A record should be kept at each track scale showing the gross, tare (whether actual or stenciled) and net weight; the date and time of weighing; the condition of the weather; whether weighed at rest or in motion; coupled at one or both ends or uncoupled; when actual tare is used, estimated amount of debris in the car.

"Section B. The point at which car is weighed and the gross tare and net weights will be noted in ink or indelible pencil on regular waybill and slip bill or card bill. When actual tare is used instead of marked tare it should be so specified (see Rule 3). The method of ascertaining the weight should also be specified as Railroad Scale, Weighing Bureau, Shippers' Tariff, Classification or Agreement Weight. This information must also be shown on transfers to connecting line, on correction sheets when issued, carried on waybills to destination, and shown on freight bills.

"Section C. When track scales are equipped with registering or recording device and sticker form of scale tickets is used, said tickets may be used in same manner as

provided above, and if space is provided thereon the information shown in Section A will be added.

"Section D. Where side cards are provided for the purpose weights should be indorsed thereon.

"Section E. In case agent at point of origin receives request from consignor for the result of weighing or reweighing, proper notation should be made on billing accompanying the car to destination. (See Rule 6.)

"Section F. Where weights are obtained for billing purposes under weight agreements which do not provide for use of the gross and tare weights, the gross and tare weights need not be shown as provided in Sections B, C and D.

(8) Rule 8—Weights to Govern and Tolerance. "Section A. Where carload freight, the weight of which is not subject to change from its inherent nature, is check-weighed or reweighed en route or at destination, no correction will be made in the billed weight except as provided below:

"Section B. If the difference between the original net weight and the weight obtained by reweighing does not exceed the tolerance provided in this rule, the first weight will not be changed. If such difference exceeds the tolerance, the car should be weighed a third time if practicable. If the third weighing confirms the original weight within the tolerance, no change shall be made. Where the original weight can not be applied as above, the lower of the second or third weight shall be used where the difference between the second and third weights does not exceed the tolerance.

"Section C. In deciding between weights obtained on track scales as to which is the more correct, all of the conditions under which the several weighings were done must be taken into consideration, including the class of

scale, condition, how recently tested, the manner of weighing, whether car was at rest or in motion, coupled or uncoupled, actual or stenciled tare used, the time of weighing, weather conditions, and the reliability of the weigher, giving precedence to that weight obtained under the best conditions.

"Section D. The consignor or consignee shall be permitted to show the actual weight of any carload shipment either by means of shipper's authenticated invoice or by weighing the entire load on platform scales, or by so weighing a proper portion of uniform or standard weight articles (not less than 10 per cent of the lading), weighing to be performed under supervision of the carrier; provided such total weight includes all blocking, packing, and debris resulting from the lading in question. This actual weight will be used to determine freight charges (subject to weight agreements if appreciable), provided the difference in weight exceeds the tolerance.

"Section E. The tolerance shall be 1 per cent of the lading, with a minimum of 500 pounds, on all carload freight, including coal and coke, except that when ashes, cinders, clay, dolomite, ganister, gravel, mill scale, ore, sand, slag, all stone (not cut), and similar bulk freight, brick and soft drain tile are loaded in open cars, the tolerance shall be 1 per cent of the lading, with a minimum of 1,000 pounds.

"Note.—Tolerance on coal and coke does not include difference in weight due to evaporation, which shall be determined and published in initial carrier's tariff.

"Section F. Weights of commodities subject to shrinkage in weight from their inherent nature, properly obtained at or near point of origin, should not be changed, except as provided for in the tariffs of the carriers. If obvious error is discovered, each case should be dealt with

upon its individual merits and report made to the originating carrier with all the facts.

(9) Rule 9—Charges for Weighing and Reweighing.

“Section A. When weights are obtained for the assessment of freight charges no charge will be made by the carrier for the service.

“Section B. When a car is weighed or reweighed, either empty or loaded, at request of either consignor or consignee, the service and charges will be in accordance with conditions named below, subject to the rules and carload minimum weights prescribed in tariffs and classifications.

“Section C. When a shipper or consignee requests that a car containing a commodity which is not subject to shrinkage from its inherent nature be reweighed, this service, wherever practicable, will be performed by the carrier without charge, provided such reweighing discloses error in the billed weight of more than the tolerance provided in Rule 8. When a car contains a commodity which is subject to shrinkage from its inherent nature, no charge will be made if the billed weight is changed, as per Rule 8, Section F.

“Section D. When a car is weighed or reweighed, either empty or loaded, at request of either consignor or consignee, a charge will be made each time car is weighed (except as provided in Section C):

“1. On private scales located at the industry, \$.... per car.

“2. On other private scales conveniently located, \$.... per car. (See note.)

“3. On railroad company's scales conveniently located, \$.... per car.

“Note.—The parties desiring the weighing done must make their own arrangements with the owners of the

scales for their use. The charge of \$. . . . covers only the weighing service performed by the carrier.

"Section E. When inbound freight is weighed or reweighed by a switching line (not participating in the freight rate) the above charges will be assessed, regardless of any variation in weights, and will be in addition to the regular switching charge. If no change is made in billed weight the charge will be against the party or road requesting weighing; when change is made in billed weight the charge will be made by the switching line against the delivering road.

"Section F. When carload shipments which are provided for in classification and tariffs at fixed or estimated weights are reweighed, at the request of consignor or consignee, the above charges will be assessed, regardless of any variation in weight.

"Section G. Where carload shipments are billed at minimum carload weight and are reweighed on request of consignor or consignee, the above charges will be assessed, unless the variation in the weight increases the freight charges.

(10) Rule 10 — Weight Agreements. "Section A. When shippers' weights of property are accepted and applied by the carriers under weight agreements, properly supervised, such weights should be designated in the prescribed manner on waybills, shipping tickets, bills of lading, or weight certificates (see Rule 7, Section B), and the property should not be reweighed, except as provided in Rule 5. Proper supervision means checking of the records of the shipper by the authorized representative of the carrier to verify the weights and descriptions furnished and the weighing of a sufficient number of cars for verifications.

"Section B. When investigation, through examination

of the shippers' records or by reweighing, discloses error in weights or description shown on original billing, the charges shall be adjusted to the proper basis, and notice of such change shall in all cases be transmitted to the interested carriers or their representatives.

"Section C. Forms of weight agreement suitable to the character of the business tendered for transportation shall embrace the following general principles, and copies thereof shall be filed with the Interstate Commerce Commission. The agreements shall be in writing and provide that—

"1. The shipper shall report and certify correct gross weights (except where estimated weights are provided in tariff or classifications), and correct description of commodities on shipping tickets, bills of lading, or weight certificates, and correct gross tare and net weights when obtained on track scales, where such weights are used for billing purposes.

"2. The shipper shall allow the authorized representative of the carrier to inspect the original weight sheets, books, invoices, and records necessary to verify the weights and description of the commodities certified in the shipping tickets, bills of lading, or weight certificate.

"3. The shipper shall promptly pay to the authorized representative of the carrier bills for all undercharges resulting from the certification of incorrect weights or improper description.

"4. When weights of uniform or standard weight articles are based upon averages the shipper shall give prompt notice to the authorized representative of the carrier when any change is made in the package or material used which will affect the weight arrived at by use of the average.

"5. The shipper shall keep in good weighing condition any and all scales used in determining weights and have track scales tested, maintained, and operated in accordance with the Track Scale Specifications and Rules approved by the American Railway Association, and shall allow the authorized representative of the carrier to inspect and test them.

"6. The agreement may be canceled by 10 days' notice in writing to either party.

"7. All shipments made under the agreement will be subject to rates and charges prescribed by classifications, tariffs, or rules of the carriers interested."

§ 2. Minimum Weights Defined.

Articles of commerce are transported by railroads in less than carload lots and in carload quantities. Since the density of commodities vary, it follows that the fixing of the minimum quantity of commodities which shall entitle the shipper to a carload rate can not be the same for all articles. Where fifteen tons of coal would constitute a carload, the same tonnage of wooden step ladders would occupy several cars. Minimum weights represent, therefore, the reasonable, fair and just differences which the carrier may make in the proportion of quantity hauled of the same article in a full carload and in less than carload lots, and apply, under similar proportionate differences, the respective rates charged upon each article according to such weights. This has been recognized often by the Interstate Commerce Commission as an essential principle in the construction of rates.

Harvard Co. vs. P. R. R. Co., 4 I. C. C. R. 212, 3 I. C. R. 257.

The proper carload minimum weight is the one which is reasonably adapted to the needs of carriers and the great

majority of shippers, and it has been the result of experience that provision for minimum weights for different sizes of cars is preferable over flat per-car rates.

It was early held by the Commission that a reasonable regulation of carload minimum weights did not constitute unjust discrimination, and that it was the duty of the carriers to enforce fixed and reasonable minimum carload weights adjusted to needs of a given commodity and affording the carriers reasonable utilization of their equipment.

Larkin Co. vs. E. & W. Transp. Co., 34 I. C. C. Rep. 106, 108.
Rates in Chicago Switching District, 34 I. C. C. Rep. 234, 241.
Spiegel & Co. vs. Sou. Ry. Co., 34 I. C. C. Rep. 448, 452.

Hooker-Hendrix Hdwe. Co. vs. M. K. & T. Ry., 34 I. C. C. Rep. 3, 8.

Durham Coal & Iron Co. vs. C. of Ga. Ry., 34 I. C. C. Rep. 10, 12.

New Orleans Shippers' Assn. vs. I. C. R. R. Co., 34 I. C. C. Rep. 32, 36.

Mixed C. L. of Lime, Cement and Plaster, 34 I. C. C. Rep. 124.
Furniture Mfgs. Assn., Etc. vs. A. A. R. R. Co., 34 I. C. C. Rep. 262, 263, 266.

Grand Rapids Plaster Co. vs. L. S. & M. S. Ry. Co., 34 I. C. C. Rep. 202, 207.

Corp. Com. of New Mexico vs. A. T. & S. F. Ry. Co., 34 I. C. C. Rep. 292.

R. R. Com. of Louisiana vs. St. L. S. W. Ry. Co., 34 I. C. C. Rep. 472, 478.

Trapor Ferry Car Services, 34 I. C. C. Rep. 516, 525, 541.

Western Trunk Lines Rules, 34 I. C. C. Rep. 554, 571, 572, 573.

Boise Lbr. Co., Ltd. vs. P. & I. N. Ry. Co., 33 I. C. C. Rep. 109, 111.

Rates on Agricultural Implements, Etc., 33 I. C. C. Rep. 119, 121.

Rates on Tomatoes from Jacksonville to Kansas City, 33 I. C. C. Rep. 145, 147.

Lindsay & Co. vs. N. P. Ry. Co., 33 I. C. C. Rep. 150, 156.

Classification of Address Plates, 33 I. C. C. Rep. 281, 285.

Anson, Gilkey & Hurd Co. vs. S. P. Co., 33 I. C. C. Rep. 332, 340, 341.

SPECIAL FREIGHT SERVICES

- Minimum Charges on Bulky Articles, 33 I. C. C. Rep. 378, 383.
Kibbe vs. A. & S. Ry. Co., 33 I. C. C. Rep. 415, 416.
Corp. Comm. of Oklahoma vs. A. T. & S. F. Ry. Co., 33 I. C. C. Rep. 503, 506.
Funck Lumber Co. vs. B. & O. S. W. R. R. Co., 33 I. C. C. Rep. 511.
Rates on Scrap Iron from Gulf Ports, 33 I. C. C. Rep. 668, 672.
R. R. Comm. of California vs. A. G. S. R. R. Co., 32 I. C. C. Rep. 17, 35.
California Fruit Growers' Asso. vs. A. G. S. R. R. Co., 32 I. C. C. Rep. 51, 53.
Rates on Blackstrap Molasses, 32 I. C. C. Rep. 176.
Portland Chamber of Commerce vs. C., M. & St. P. Ry. Co., 32 I. C. C. Rep. 188, 190.
Hoyt & Bergen vs. C. & N. W. Ry. Co., 32 I. C. C. Rep. 319, 321, 322.
Freight Rates from Minnesota Points, 32 I. C. C. Rep. 361, 366, 367.
Cement Rates from Points in Illinois, 32 I. C. C. Rep. 369, 371.
Rates on Poultry in Western Trunk Line Territory, 32 I. C. C. Rep. 380, 381.
Salt Lake Mattress & Mfg. Co. vs. A. T. & S. F. Ry. Co., 32 I. C. C. Rep. 417, 427.
Rules Governing Shipments of Freight in Peddler Cars, 32 I. C. C. Rep. 428, 433.
Rates on Cement, Lime, Salt, Etc., 32 I. C. C. Rep. 532, 535.
Commodity Rates to Pacific Coast Terminals, 32 I. C. C. Rep. 611, 623, 630.
Thompson vs. A. T. & S. F. Ry. Co., 31 I. C. C. Rep. 138, 140.
Pacific Fruit Exchange vs. S. P. Co., 31 I. C. C. Rep. 159, 166.
Dixie Mfg. Co. vs. B. C. & A. Ry. Co., 31 I. C. C. Rep. 337, 339.
Royster Guano Co. vs. A. C. L. R. R. Co., 31 I. C. C. Rep. 458, 461.
Fourth Section Violations in Rates on Sugar, 31 I. C. C. Rep. 511, 514, 516, 523.
Douglas & Co. vs. I. C. R. R. Co., 31 I. C. C. Rep. 587, 606.
National Casket Co. vs. S. Ry. Co., 31 I. C. C. Rep. 678, 684, 697.
Wallingford vs. A. T. & S. F. Ry. Co., 30 I. C. C. Rep. 19.
Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. Rep. 349, 350, 351.
Morris, Johnson, Brown Mfg. Co. vs. I. C. R. R. Co., 30 I. C. C. Rep. 443, 445.
Dunnage Allowances, 30 I. C. C. Rep. 538.

- Rock Springs Distilling Co. vs. I. C. R. R. Co., 29 I. C. C. Rep. 18, 27.
- Maier & Co. vs. S. P. Co., 29 I. C. C. Rep. 103, 105.
- Rates on Excelsior and Flax Tow, 29 I. C. C. Rep. 640.
- Northwestern Woodenware Co. vs. C. M. & P. S. Ry. Co., 28 I. C. C. Rep. 237, 242.
- Commodity Rates Between Missouri River Points, 28 I. C. C. Rep. 265, 266.
- Classification of Iron and Steel Window Frames and Sash, 28 I. C. C. Rep. 500.
- Lee Co. vs. I. C. R. R. Co., 28 I. C. C. Rep. 515, 516.
- Alexandria Barrel Co. vs. C. R. I. & P. Ry. Co., 27 I. C. C. Rep. 196, 197.
- Rates on Tin Cans and Other Commodities, 27 I. C. C. Rep. 298.
- Western Fruit Jobbers' Asso. vs. C. R. I. & P. Ry. Co., 27 I. C. C. Rep. 417, 423.
- Barnard Co. vs. C. M. & St. P. Ry. Co., 26 I. C. C. Rep. 91, 93.
- Minimum Weights on Corn in Southwest, 26 I. C. C. Rep. 197, 202.
- Rates on Fuel Wood, Sawdust and Shavings, 26 I. C. C. Rep. 254, 255.
- Regulations Restricting the Dimensions of Baggage, 26 I. C. C. Rep. 292, 306.
- McLoughlin vs. T. & P. Ry. Co., 26 I. C. C. Rep. 307, 308.
- Atlas Lumber & Shingle Co. vs. N. P. Ry. Co., 26 I. C. C. Rep. 313, 314.
- Transcontinental Commodity Rates, West Bound, 26 I. C. C. Rep. 456, 460.
- Alfred Struck Co. vs. L. & N. R. R. Co., 26 I. C. C. Rep. 469, 471.
- Partridge & Sons Co. vs. P. R. R. Co., 26 I. C. C. Rep. 484, 485, 487.
- Rates on Asphalt and Asphaltum, 26 I. C. C. Rep. 614, 616.
- Furniture Rates in the Northwest, 26 I. C. C. Rep. 655, 659.
- Riverside Mills vs. G. R. R., 25 I. C. C. Rep. 434.
- Western Classification Case, 25 I. C. C. Rep. 442, 443, 480.
- Riverside Mills vs. G. R. R., 25 I. C. C. Rep. 434, 435.
- Lindsay Bros. vs. P. M. R. R. Co., 25 I. C. C. Rep. 368.
- Eagle Pass Lumber Co. vs. National Railways of Mexico, 25 I. C. C. Rep. 5.
- Kibbe vs. St. L. B. & M. Ry. Co., 25 I. C. C. Rep. 661.
- Paducah Cooperage Co. vs. I. C. R. R. Co., 25 I. C. C. Rep. 372.
- In re Wool, Hides and Pelts, 25 I. C. C. Rep. 185.

- Thompson vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 174.
Lindsay Bros. vs. P. M. R. R. Co., 25 I. C. C. Rep. 368, 369.
Bartlesville Salvage Co. vs. M. K. & T. Ry. Co., 25 I. C. C. Rep. 672, 674.
Moore vs. D. & R. G. R. R. Co., 25 I. C. C. Rep. 1, 2.
Riverside Mills vs. St. L. & S. F. R. R. Co., 24 I. C. C. Rep. 264.
Hardie Mfg. Co. vs. O. R. R. & N. Co., 24 I. C. C. Rep. 545.
In re Advances on Potatoes, 23 I. C. C. Rep. 69.
Du Pre Co. vs. B. R. & P. Ry. Co., 23 I. C. C. Rep. 226, 228.
Texas Seed & Floral Co. vs. N. Y. C. & St. L. R. R. Co., 23 I. C. C. Rep. 504.
In re Transportation of Wool, Hides and Pelts, 23 I. C. C. Rep. 151, 158.
Sunderland Bros. Co. vs. St. L. & S. F. R. R. Co., 23 I. C. C. Rep. 259, 261.
In re Advances on Lemons, 23 I. C. C. Rep. 27, 30.
Milburn Wagon Co. vs. L. S. & M. S. Ry. Co., 22 I. C. C. Rep. 93, 104.
Scudder vs. T. & P. Ry. Co., 22 I. C. C. Rep. 60.
Arlington Heights Fruit Exchange vs. S. P. Co., 22 I. C. C. Rep. 149, 154.
In re Advances in Rates on Locomotives and Tenders, 21 I. C. C. Rep. 103, 109.
Richards vs. N. P. Ry. Co., 21 I. C. C. Rep. 468.
Baxter & Co. vs. G. S. & F. Ry. Co., 21 I. C. C. Rep. 647.
Goodman Mfg. Co. vs. P. C. C. & St. L. Ry. Co., 21 I. C. C. Rep. 95.
Buffalo Hardwood Lumber Co. vs. B. & O. S. W. R. R. Co., 21 I. C. C. Rep. 536, 538.
Hull Co. vs. M. P. Ry. Co., 21 I. C. C. Rep. 486.
Georgia Fruit Exchange vs. S. Ry. Co., 20 I. C. C. Rep. 623, 630.
Stacy & Sons vs. O. S. L. R. R. Co., 20 I. C. C. Rep. 136, 137.
Davies vs. I. C. R. R. Co., 19 I. C. C. Rep. 3, 4.
Lull Carriage Co. vs. C. K. & S. Ry. Co., 19 I. C. C. Rep. 15, 16.
Miller Brewing Co. vs. C., M. & St. P. Ry., 19 I. C. C. Rep. 590, 591.
Oregon Lumber Co. vs. O. R. R. & N. Co., 19 I. C. C. Rep. 582.
Ponchatoula Farmers' Assn. vs. I. C. R. R. Co., 19 I. C. C. Rep. 513, 517, 519.
Jones vs. Southern Ry. Co., 18 I. C. C. Rep. 150.

Sunderland Bros. Co. vs. M. K. & T. Ry. Co., 18 I. C. C. Rep. 425.

Tritch Hardware Co. vs. C. R. I. & P. Ry. Co., 18 I. C. C. Rep. 71.

Platten Produce Co. vs. K. L. S. & C. Ry. Co., 18 I. C. C. Rep. 249.

Acme Cement Plaster Co. vs. C. G. W. Ry. Co., 18 I. C. C. Rep. 19, 23.

Sunderland Bros. Co. vs. St. L. & S. F. Ry. Co., 18 I. C. C. Rep. 545.

Barnum Iron Works vs. C. C. C. & St. L. Ry. Co., 18 I. C. C. Rep. 94.

Windsor Turned Goods Co. vs. C. & O. Ry. Co., 18 I. C. C. Rep. 162, 164.

Commercial Club of Omaha vs. S. P. Co., 18 I. C. C. Rep. 53, 55.

Peerless Agencies Co. vs. A. T. & S. F. Ry. Co., 17 I. C. C. Rep. 218.

Montague & Co. vs. A. T. & S. F. Ry. Co., 17 I. C. C. Rep. 72.

James & Abbot Co. vs. B. & M. R. R., 17 I. C. C. Rep. 273.

Montague & Co. vs. A. T. & S. F. Ry. Co., 17 I. C. C. Rep. 72, 74, 75, 76.

Pease Bros. Furniture Co. vs. S. P. L. A. & S. L. R. R., 17 I. C. C. Rep. 223, 224.

Springer vs. E. P. & S. W. R. R. Co., 17 I. C. C. Rep. 322.

Tritch Hardware Co. vs. Rutland R. R. Co., 17 I. C. C. Rep. 542.

Liebold Co. vs. D. L. & W. R. R. Co., 17 I. C. C. Rep. 503.

Old Dominion Copper Mining & Smelting Co. vs. P. R. R. Co., 17 I. C. C. Rep. 309.

Asparagus Growers' Asso. vs. A. C. L. R. R. Co., 17 I. C. C. Rep. 423.

Black Horse Tobacco Co. vs. I. C. R. R. Co., 17 I. C. C. Rep. 588.

Racine-Sattley Co. vs. C., M. & St. P. Ry. Co., 16 I. C. C. Rep. 488.

Kaye & Carter Lumber Co. vs. Minn. & Int. Ry. Co., 16 I. C. C. Rep. 285.

Newark Machine Co. vs. P. C. C. & St. L. Ry. Co., 16 I. C. C. Rep. 291.

La Salle Paper Co. vs. Mich. Cent. R. R. Co., 16 I. C. C. Rep. 149, 150.

Swift & Co. vs. C. & A. R. R. Co., 16 I. C. C. Rep. 426, 430.

Beggs vs. Wabash R. R. Co., 16 I. C. C. Rep. 208.

- Ozark Fruit Growers' Asso. vs. St. L. & S. F. R. R. Co., 16 I. C. C. Rep. 134, 136.
- Noble vs. C., M. & St. P. Ry. Co., 16 I. C. C. Rep. 420, 421.
- Ozark Fruit Growers' Asso. vs. St. L. & S. F. R. R. Co., 16 I. C. C. Rep. 106, 108.
- Hanna Coal Co. vs. N. P. Ry. Co., 16 I. C. C. Rep. 289.
- Indianapolis Freight Bureau vs. C. C. C. & St. L. Ry. Co., 16 I. C. C. Rep. 56, 70.
- Hewitt & Connor vs. C. & N. W. Ry. Co., 16 I. C. C. Rep. 431.
- Zellerbach Paper Co. vs. A. T. & S. F. Ry. Co., 16 I. C. C. Rep. 128.
- Bennett vs. M. St. P. & S. Ste. M. Ry. Co., 15 I. C. C. Rep. 301.
- Indianapolis Freight Bureau vs. C. C. C. & St. L. Ry. Co., 15 I. C. C. Rep. 504.
- Falls & Co. vs. C. R. I. & P. Ry. Co., 15 I. C. C. Rep. 269.
- Rosenbaum Grain Co. vs. M. K. & T. Ry. Co., 15 I. C. C. Rep. 499.
- Darling & Co. vs. B. & O. R. R. Co., 15 I. C. C. Rep. 79.
- General Chemical Co. vs. N. & W. Ry. Co., 15 I. C. C. Rep. 349.
- Porter vs. St. L. & S. F. R. R. Co., 15 I. C. C. Rep. 1, 2.
- City of Spokane vs. N. P. Ry. Co., 15 I. C. C. Rep. 376.
- Indianapolis Freight Bureau vs. C. C. C. & St. L. Ry. Co., 15 I. C. C. Rep. 370.
- Florida Fruit & Vegetable Shippers, Etc. vs. A. C. L. R. R. Co., 14 I. C. C. Rep. 476.
- Cedar Hill Coal & Coke Co. vs. Colo. & So. Ry. Co., 14 I. C. C. Rep. 606.
- Tayntor Granite Co. vs. Mont. & W. R. R. Co. et al., 14 I. C. C. Rep. 136.
- Kansas City Hay Dealers' Assn. vs. Mo. P. Ry. Co. et al., 14 I. C. C. Rep. 597.
- Momsen & Co. vs. G. V. G. & N. Ry. Co. et al., 14 I. C. C. Rep. 614.
- American Lumber & Mfg. Co. vs. So. Pac. Co. et al., 14 I. C. C. Rep. 561.
- Pueblo Transportation Assn. vs. S. Pac. Co. et al., 14 I. C. C. Rep. 82.
- Masurite Explosive Co. vs. P. & L. E. R. R. Co. et al., 13 I. C. C. Rep. 405.
- Topeka Banana Dealers' Asso. et al. vs. St. L. & S. F. R. R., 13 I. C. C. Rep. 620.
- Romona Oolitic Stone Co. vs. Vandalia R. R. Co., 13 I. C. C. Rep. 115.

Hydraulic Press Brick Co. vs. St. L. & S. F. R. R. Co. et al.,
13 I. C. C. Rep. 342.

Amarillo Gas Co. vs. A. T. & S. F. Ry. Co. et al., 13 I. C. C.
Rep. 240.

Georgia Rough & Cut Stone Co. vs. Georgia R. R. Co. et al.,
13 I. C. C. Rep. 401.

Reynolds vs. Southern Express Co., 13 I. C. C. Rep. 536.

Pacific Purchasing Co. vs. C. & N. W. Ry. Co., 12 I. C. C.
Rep. 549.

Cambria Steel Co. vs. G. N. Ry. Co., 12 I. C. C. Rep. 466.

Wiemer & Rich vs. C. & N. W. Ry. Co., 12 I. C. C. Rep. 462.

Mason vs. C. R. I. & P. Ry. Co., 12 I. C. C. Rep. 61.

Waxelbaum & Co. vs. A. C. L. R. R. Co., 12 I. C. C. Rep. 178.

American Fruit Union of Cincinnati vs. C. N. O. & T. P. Ry.
Co., 12 I. C. C. Rep. 411.

Dallas Freight Bureau vs. Mo. K. & T. Ry. Co., 12 I. C. C.
Rep. 427.

See also—

I. C. C. Confr. Rulings Bulletin No. 6, Rulings Nos. 84, 152, 264,
273, 274, 282, 331, 338.

The Interstate Commerce Commission is without
authority to prescribe a minimum charge for any service
or a maximum service for any charge.

Rates in Chicago Switching District, 34 I. C. C. Rep. 234, 241.

CHAPTER III.

WEIGHTS AND WEIGHING—(Continued).

- § 1. Carload Minimum Weights Based on Wholesale Principle.
 - (1) When Carload Quantity is Properly Established.
 - (2) Tariff Minimum Weights.
 - (3) Relation of Carload Minimum Weights to Less-than-Carload Quantities.
- § 2. Carload Minimum Weights for Shipments in or on Other Than Tank Cars.
- § 3. Carload Minimum Weights for Tank Cars.
- § 4. Right of Carrier to Fix Minimum Weights.
- § 5. Relation of Minimum Weights to Rates.
- § 6. Minimum Weights for Cars of Varying Dimensions and Capacities.
- § 7. Graduated Carload Minimum Weight Rule in Official Classification.
- § 8. Graduated Carload Minimum Weight Rule in Southern Classification.
- § 9. Graduated Carload Minimum Weight Rule in Western Classification.

CHAPTER III.

WEIGHTS AND WEIGHING—(Continued).

§ 1. Carload Minimum Weights Based on Wholesale Principle.

In commercial affairs the wholesale principle is applied in the fixing of prices for large quantities. This principle, to a limited extent, is recognized in railroad rate-making in the establishment of carload ratings and rates. It is employed in connection with ratings for large multiples of weight units when such aggregate of weight units can be handled by the carrier in a single service unit. In other words, the car of the carrier, when fully loaded, may properly be charged for on a relatively lower scale of rates than is applicable to a smaller quantity of like freight, but the wholesale principle is not applied to multiples of carloads or train units. The carloads do not warrant any lower charge per car than the single carload.

(1) When Carload Quantity is Properly Established. The Commission has always recognized the propriety of carload ratings. It has in many cases established carload and less-than-carload rates upon the same commodity. Whether a carload rating should be established, in a given instance, depends not only upon whether a commodity is offered for shipment in carload quantities, but also upon other considerations. The shipper tendering a carload of freight is not of necessity entitled to a more favorable rate than one who tenders 100 pounds of the same com-

modity. To hold that the carload must be given a lower rate per 100 pounds than the smaller quantity, for the sole reason that the cost of the service to the carrier is less in the case of a carload shipment, is equivalent to reasoning a train load should, in turn, receive a lower rate per 100 pounds than the carload. Such reasoning, however, is not countenanced by the Commission.

The result of this wholesale principle carried to any extreme beyond the single carload unit, would be to build up overwhelming monopolies among the larger shippers to the exclusion of equal opportunity for smaller single carload shippers to compete with them.

An illustrative case of the attitude of the Interstate Commerce Commission toward the establishment of carload ratings is *Brownell vs. C. & C. M. R. R. Co.*, 5 I. C. C. Rep. 638. The ground of the Commission's ruling in the *Brownell* case is found on page 651, as follows:

"The unit of quantity that carriers have universally employed for the purpose of rate making is the 100 pounds. The purpose of a classification is to group the various articles of commerce into general classes upon which the rate per 100 pounds shall apply. Classification of carloads in a lower class than is given to the same articles in a less quantity was at first merely incidental to the business of transportation, and the practice has not yet become so general that a lower carload class must be given to every article which may be offered in carload quantities. The justice of the demand depends upon the facts in each case; it cannot be determined by an inflexible general rule. It is a sound rule for carriers to adapt their classifications to the laws of trade; that is, as before stated, if an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give it a carload classification. The large dealers, who now

control more than three-fourths of the business of gathering and shipping eggs to the large cities, cannot be said to suffer material damage from the competition of small shipments under the same rate to the same market. Beyond giving a practical monopoly to the large dealers, it does not appear that any other portion of the public would be benefited by a lower class for carloads of eggs. If the railroads were not willing to gather the small lots of eggs and carry them direct to a general market, there might be some ground for holding that the volume of egg traffic, the demands of trade, and the interests of local dealers and producers are such that a lower carload classification is desirable; but the special facilities furnished local shippers for putting their eggs in large markets in as fresh state as possible are, in our view, of greater benefit to producers, local dealers, city dealers, and consumers than any other method of gathering and shipping which has yet been devised for this or any other perishable food product; and such advantage to the general public should not be interfered with or its continuance in any way discouraged unless a more satisfactory method of reaching the markets can be established in its stead."

The following cases express the attitude of the Interstate Commerce Commission on this most important element of rate making:

Brownell vs. C. & C. M. R. R. Co., 5 I. C. C. Rep. 638.

Planters Compress Co. vs. C., C. C. & St. L. R. R. Co., 11 I. C. C. Rep. 382.

National Wholesale Lumber Dealers' Assn. vs. A. C. R. R. Co., 14 I. C. C. Rep. 154, 162.

California Commercial Assn. vs. Wells Fargo Express Co., 14 I. C. C. Rep. 422, 431.

Wholesale Fruit & Produce Assn. vs. A. T. & S. F. Ry. Co., 14 I. C. C. Rep. 410, 418.

Duncan & Co. vs. M. C. & St. L. Ry., 16 I. C. C. Rep. 590.

- Bentley & Olmsted vs. L. S. & M. S. Ry. Co., 17 I. C. C. Rep. 56.
Carstens Packing Co. vs. O. S. L. R. R. Co., 17 I. C. C. Rep. 324, 328.
Voorhees vs. A. C. L. R. R. Co., 16 I. C. C. Rep. 42, 43.
Florida Fruit & Vegetables Assn. vs. A. C. L. R. R. Co., 17 I. C. C. Rep. 552, 564.
Albree vs. B. & M. R. R. Co., 22 I. C. C. Rep. 303, 319.
In re Advances on Milk, 23 I. C. C. Rep. 500, 503.
In re Suspension & Investigation of Western Classification No. 51, 25 I. C. C. Rep. 442 et seq.
John Taylor Dry Goods Co. vs. M. P. Ry. Co., 28 I. C. C. Rep. 205 et seq.

A very recent expression on the subject by the Interstate Commerce Commission is that:

"A carload minimum weight, which is reasonably adapted to the needs of the carrier and a great majority of shippers, will not be increased because one shipper by the expenditure of exceptional effort finds himself able to load more heavily than his competitor, neither will this Commission under such circumstances prescribe a lower rate per 100 pounds conditional upon the use of the higher minimum weight as the measure of the carload."

This is emphatically expressive of the denial by the Commission of any extreme use of the wholesale principle in respect to increased tonnage units above carload quantities.

(2) Tariff Minimum Weights. A proper relation must exist between carload and less-than-carload rates, and the establishment of carload ratings must be in accordance with public interests and commercial and transportation necessities.

Each of the interstate classifications establishes the status of the carload quantity in practically the same manner.

The rule in the Official Classification is as follows:

"Carload ratings apply only when a carload of freight is shipped from one station, in or on one car (except as provided in Rule 24), in one day by one shipper for delivery to one consignee at one destination. One bill of lading from one loading point only and one freight bill shall be issued for such carload shipment."

The rule in the Western Classification is:

"In order to entitle a shipment to the carload rate, the quantity of freight requisite under the rules to secure such carload rate must be delivered at one forwarding station, in one working day, by one consignor, consigned to one consignee and destination, except that when freight is loaded in cars by consignor it will be subject to the Car Service Rules and charges of the forwarding railroad."

(3) Relation of Carload Minimum Weights to Less-Than-Carload Quantities. Throughout the entire field of rate-making one is confronted with the problem of determining a proper relationship between carload and less-than-carload rates. All the different factors which enter into the establishment of a rate should be considered in the establishment of the proper relationship between carload and less-than-carload ratings. The difference in cost to the carrier should be given due consideration. It is impossible to establish a mathematically correct ratio between carload and less-than-carload quantities. The only rule to be followed is that each case must be considered upon its own merits and that the relationship between the quantities should not be determined merely from a physical service and cost basis, but consideration must be given to the commercial and economic necessities. The importance of the establishment of an equitable relationship is equivalent to recognition of practically every principle underlying rate-making. The vital requirements of

the Act to Regulate Commerce might easily become warped into commercial viciousness by an excessive difference between carload and less-than-carload ratings.

In some essentials, it might be stated that a fair general rule in establishing a proper relationship between the two quantities, would be to follow the economic relativity of the carrier's cost of handling, the demand upon terminal properties of carriers, the utilization of equipment, the offering of freight for shipment in carload quantities and any public interest that might be involved.

Theoretically, the weight of the minimum quantity of freight for which a carload rating is to be established should reflect the average of tonnage from two stand-points—the average commercial selling unit and the physical transportation unit. In other words, it would seem that the carload minimum weight should be arrived at by a process of equalizing the commercial nature of the traffic and the carrying capacity of a freight car. In the abstract, the rule governing the establishment of carload minimum weights, is that such minimum weight shall be so fixed as to give the highest efficiency in the commercial use and physical movement and unloading of cars.

In treating the subject of carload minimum weights, the rules relative thereto will be divided into three divisions, viz., (1) carload minimum weights for other than tank cars, (2) carload minimum weights for tank cars, and (3) graduated carload minimum weights.

See I. C. C. Tariff Circular No. 18-A, Rule 66, for tariff publication requirements of I. C. C.

§ 2. Carload Minimum Weights for Shipments in or on Other Than Tank Cars.

In the Official Classification, as also in the Western and Southern classifications, the carload minimum weight

assigned to any particular article is generally found in connection with the item rating of such article in the body of the classification. However, articles will be found in the body of the classification for which no carload minimum weight is assigned, and to supply a carload minimum weight for such an article, Rule 5-A automatically provides carload minimum weights. This rule reads as follows:

"Unless otherwise provided in the classification, the minimum weight upon all property in carloads, when loaded upon flat or in gondola, stock or box cars, will be 30,000 lb. (actual weight to be charged for when in excess of the minimum weight—See Section D of this rule), except as provided in Section C of this rule, Rule 7(A) and Rule 27.

"For dimensions of flat, gondola, stock or box cars, see the Official Railway Equipment Register, I. C. C.-R. E. R. No. 39, and P. S. C.-2. N. Y. R. E. R. No. 39 (Issued by G. P. Conard, Agent), and reissues thereof."

In addition to this general rule, the following provisions govern minimum weights shown on import and export bills of lading:

"When the Official Classification provides that charges shall be made on minimum weights, the spaces '..... weight.....(subject to correction)' on inland Bills of Lading shall be filled in so as to read '.....minimumweight.....lb. (subject to correction for any excess).' And similarly, on export Bills of Lading, 'Minimum inland weight to Atlantic Seaboard.....lb. (subject to correction for any excess).' (Fill in whatever the minimum weight is that the classification requires.)"

The exceptions to this rule are as follows: Section 6, Rule 5, referred to above, governs excess over quantity that can be loaded in a car. This subject is treated under Excess Shipments.

Section No. 7, Rule 5-C, provides as follows:

"This rule will not apply when specific items in this classification provide otherwise; nor on bulk freight or live stock; nor on freight which at the time of transportation requires and is loaded in either heated, refrigerator, insulated, ventilator or tank cars, or cars specially prepared either by the carrier or shipper; nor on freight, the authorized minimum carload weight for which is 24,000 lb. or less; nor on articles carried under the provisions of Rule 7(A) or Note 6 under the heading of Iron and Steel."

Rule 7-A referred to in the latter exception, governs articles which, on account of length, require two or more cars to transport them. This subject will be treated under the head of Articles Too Long to be Transported in a Single Car.

Note 6, under the heading of Iron and Steel and Articles Manufactured of Same, refers to the same subject, but is confined to the articles enumerated.

Rule 27, referred to in the exception above, will be treated under the subject of Graduated Carload Minimum Weights.

The Southern Classification contains the least number of carload minimum weights of any of the interstate classifications, but it carries a general rule automatically to establish carload minimum weights as follows:

"Unless otherwise specified in the classification, the minimum carload weight of all articles shall be 24,000 lb., or 12 tons, where the rate applies per net or gross ton.

"When a minimum carload weight of more than 20,000 lb. is specified, such minimum will apply regardless of the length of the car used."

It is obvious that as to shipments moving in Official and Southern classification territories, the difference in the basic rule establishing a general carload minimum weight,

must be very carefully handled in actual shipping practice. In other words, the loading of the car must be made to conform to the maximum requirement as to carload minimum weight of either classification. It can be readily seen that if a shipment were loaded to come just within the 24,000-lb. rule of the Southern Classification—that is, a less than carload quantity becoming entitled to a carload rating—it would in most instances be insufficient to procure the carload rating under the 30,000-lb. rule in the Official Classification.

The Western Classification does not contain any general carload minimum weights for articles not so rated in the classification proper. The rule in the Western Classification is that the carload minimum weight must be specifically published in connection with the item rating of the article. The rule in connection with articles for which a carload minimum weight is established is that “the minimum carload weight provided is the least weight on which the carload rating will be computed.”

§ 3. Carload Minimum Weights for Tank Cars.

The carload minimum weight rule, in general, governing commodities shipped in tank cars, is essentially the same in each of the three interstate classifications. When not otherwise provided in connection with specific articles, the minimum carload weight for the tank car is the maximum gallonage capacity of the tank, or subject to certain exceptions to be found in the rules and regulations for the transportation of dangerous articles. The determining factors, in the assessment of charges for shipments in tank cars, as to capacities of tank and tank sizes, are all covered in Circular 6 Series, issued by the Western Trunk Line Committee. Exceptions for vacant interior spaces in tanks in connection with the shipment of certain inflammable

liquids, are governed by Section 1825 of the I. C. C. Regulations for the Transportation of Dangerous Articles.

See Rules Sections of current Official, Southern and Western Classifications and Exceptions thereto; and In re Investigation and Suspension of Western Classification No. 51, 25 I. C. C. Rep. 442.

§ 4. Right of Carrier to Fix Minimum Weights.

The rule that a carrier has the right to establish a minimum on carload shipments as high as will permit the commodity to be safely carried without injury, is not inconsonant with the later rulings of the Commission. There is no duty upon the carrier to establish this minimum at such an amount as the consignee or purchaser decides is advantageous for him. In other words, the minimum should be established with relation to the capacity of the car and not to the needs or desires of the purchasers of the product.

Ozark Fruit Growers' Assn. vs. St. L. & S. F. R. R. Co. et al.,
16 I. C. C. R. 134, 136.

See also—

Leonard vs. C. & A. R. R. Co., 3 I. C. C. R. 241, 2 I. C. R. 599.
Ponchatoula Farmers' Assn. vs. I. C. R. R. Co., 19 I. C. C. R.
513, 517.

Where a rate for carload shipment is relatively lower than less-than-carload rate, the reasonableness of a minimum carload weight to which carload rate will apply is recognized, as is also the desirability of highest efficiency both in the movement and the loading of cars.

Rule 66-(a), Tariff Circular No. 18-A.

In dealing with the transportation of a commodity, the carrier may both for the purpose of securing the greatest

possible use of the capacity of its car and for the purpose of protecting itself against an unduly low charge for a carload movement, establish a minimum below which the carload rate shall not be applied. Nor is the minimum thus established of necessity unlawful, because it may happen in some instances that the weight prescribed can not by any possibility be put into the car. It is no hardship in such case to require the shipper to pay either the less-than-carload rate on the number of pounds actually shipped by him or the carload rate on the number of pounds fixed by the minimum.

Thus, in the case of furniture shipments, it is not, as a practical matter, possible to establish a minimum for each kind of furniture; nor could such minima, if established, be made available under all circumstances, since the consignee frequently, and perhaps usually, desires to put different sorts of furniture into the same car. It is also apparent that if a minimum were prescribed for each kind of furniture, shippers would find their ability to take advantage of minimum loads seriously handicapped because of the necessity of shipping the minimum weight of a particular article of furniture. It is plainly in the interest of economical transportation that cars containing light and bulky articles should be loaded as heavily as possible, and it is equally plain that the carrier can afford, to an extent, to decrease its rates in proportion as the loading increases.

Montague & Co. vs. Atchinson, Etc., R. Co. et al., 17 I. C. C. R. 72, 75.

The reasonableness of carload minimum weights and the relation thereof to any-quantity and less-than-carload ratings, have been frequently brought before the Commis-

sion, both as questions in classification propriety and as affecting individual commodities. The increased size of the present-day equipment of the carriers has caused the physical-capacity standard for fixing carload minimum weights to cease to govern universally. The situations involving adjustment of carload minimum weights are now more often comparable with and arise out of commercial conditions than controlled by car size alone.

In its Suspension and Investigation of Western Classification No. 51 the Commission declared that carriers should take into consideration both the physical minimum and the commercial minimum in deciding upon a classification minimum to govern carload shipments throughout the country and provide themselves with cars of corresponding sizes. What these shall be must be determined in the light of all the facts applicable to each individual case. The physical minimum is that minimum which represents the weight or bulk quantities which can be loaded into a car from the point of view of space or the theoretical number of packages capable of being loaded into a car, determined by dividing the cubical contents of the car by the cubical contents of one of the packages, multiplied by the weight of the package, possibly with some consideration of the dimensions of the package. The commercial minimum is that minimum which represents the unit of purchase and sale of the commodity in question as established by custom and the conditions existing in that trade and in the territory in which it governs at the time the minimum was established. The physical minimum would consider only physical loading capacity, while the commercial minimum would consider in addition trade

requirements, conditions of manufacture, distribution, and consumption.

In re Suspension and Investigation of Western Classification
No. 51, 25 I. C. C. Rep. 442, 479.

See also—

In re Western Trunk Line Rules, 34 I. C. C. Rep. 554, 575.

§ 5. Relation of Minimum Weights to Rates.

The objective point is the charge to the shipper for the service, which is worked out by the combined application of rate and minima. It would seem to follow, therefore, that there is a connection between the minimum and the rate. If the minimum is reduced the rate may be properly advanced, and if the minimum is increased the rate should be reduced. This principle has been observed in fixing the rates and the minima applicable to the movement of many kinds of commodities, and within proper limits is a reasonable one, but it is not possible, however, to adjust the rate without a proper adjustment of the minimum.

Montague & Co. vs. Atchinson, Etc., Ry. Co. et al., 17 I. C. C. R. 72, 75.

See Rule 66-(b), Tariff Circular No. 18-a.

Lull Carriage Co. vs. C. K. & S. Ry. Co., 19 I. C. C. R. 15, 16.

Compare—

In re Transportation of Wool, Hides and Pelts, 23 I. C. C. Rep. 151, 158, holding that a mere increase in a minimum formerly 15,000 pounds to 20,000 pounds cannot be said to be an advance in the rate where no additional burden is placed on the shipper.

In re Transportation of Wool, Hides and Pelts, 25 I. C. C. Rep. 185, 187.

§ 6. Minimum Weights for Cars of Varying Dimensions and Capacities.

Carriers provide cars of varying dimensions and capacities, and they provide minimum weights for the several kinds of cars based upon those dimensions and capacities. At times when transportation facilities are inadequate to supply the demand upon them it is frequently difficult or impossible for the carrier to furnish a shipper with a car of the dimensions or capacity desired by him, although the carrier has in its tariffs provisions for the use of such car. Manifestly it is not equitable or proper to require the would-be shipper to pay additional transportation charges for the privilege of using a car of different dimensions or capacity from that which would suit his shipment or forego entirely his desire to ship.

Some carriers provide elastic rules which properly permit the use of cars of different dimensions or capacities when they are furnished by the carrier in lieu of those desired or ordered by the shipper. Other carriers do not so provide, and as a result many instances arise in which the initial carrier under such provision furnishes the shipper with cars at its convenience and connecting carriers that have not adopted similar provisions assess higher charges in accordance with their tariffs, thus imposing upon the shipper a wholly unexpected, and, in the view of the Commission, unreasonable charge.

Rule 66, Tariff Circular No. 18-A.

Each of the interstate classifications contains a rule graduating carload minimum weights according to the sizes of cars. The standard car in each of the classifications is 36 feet 6 inches in length.

These rules are too voluminous to be quoted in this text, but reference should be made to them at all times in ordering cars from the carrier.

In the Official Classification rule, graduated carload minimum weights are provided for cars over 36 feet 6 inches in length, to and including cars over 50 feet 6 inches in length, on articles for which the following carload minimum weights are provided in the classification:

10,000 lb.	16,000 lb.
11,000 lb.	18,000 lb.
12,000 lb.	20,000 lb.
14,000 lb.	22,000 lb.
15,000 lb.	24,000 lb.

The Southern Classification provides that when the minimum carload weight for a given article, established in the classification, is 20,000 lb. or less, a graduated scale of carload minimum weights will be applied on cars over 36 feet 6 inches to and including cars over 50 feet 6 inches in length, for articles the carload minimum weights for which are established in the classification as follows:

8,000 lb.	15,000 lb.
10,000 lb.	16,000 lb.
12,000 lb.	18,000 lb.
14,000 lb.	20,000 lb.

The Western Classification contains a rule differing from the above in but one particular and that is that deduction carload minimum weights are provided for cars 35 feet 6 inches in length or less, in addition to the graduated scale of carload minimum weights for cars over 36 feet 6 inches in length, and including cars 50 feet 6 inches in length, for articles the carload minimum weights of which are established in the classification as follows:

5,000 lb.	10,000 lb.
8,000 lb.	11,000 lb.
9,000 lb.	12,000 lb.

14,000 lb.	20,000 lb.
15,000 lb.	22,000 lb.
16,000 lb.	24,000 lb.
18,000 lb.	30,000 lb.

The application of graduated carload minimum weights may only be made, in the Official Classification, when the item rating of the article provides that it shall be "Subject to Rule 27," and in the Western Classification only when the item rating of an article provides that it shall be "Subject to Rule 6-B."

In the Southern Classification, no such application prevails in the classification proper, but the graduated minimum carload weights are applied when a minimum carload weight of 20,000 lb. or less is specified for the article in the item rating.

The Interstate Commerce Commission has held that the principle of graduated carload minimum weights according to car sizes is a just and proper one, but the actual application of such a rule must vary with the articles to which it is to be applied, from both the standpoint of the commercial minimum and the physical minimum.

§ 7. Graduated Carload Minimum Weight Rule in Official Classification.

In the item ratings of articles in the current Official Classification making carload ratings "Subject to Rule 27," a graduated scale of carload minimum weights according to car size is provided, as follows:

		When the Minimum Carload Weight provided in the Classification for the Article shipped is:				
		24,000 lb. Charge not less than	22,000 lb. Charge not less than	20,000 lb. Charge not less than	18,000 lb. Charge not less than	16,000 lb. Charge not less than
Cars over	And not over	lb.	lb.	lb.	lb.	lb.
36 ft. 6 in.	37 ft. 6 in. long	24,720	22,660	20,600	18,540	16,480
37 ft. 6 in.	38 ft. 6 in. long	25,440	23,320	21,200	19,080	16,960
38 ft. 6 in.	39 ft. 6 in. long	26,160	23,980	21,800	19,620	17,440
39 ft. 6 in.	40 ft. 6 in. long	26,880	24,640	22,400	20,160	17,920
40 ft. 6 in.	41 ft. 6 in. long	28,080	25,740	23,400	21,060	18,720
41 ft. 6 in.	42 ft. 6 in. long	29,280	26,840	24,400	21,960	19,520
42 ft. 6 in.	46 ft. 6 in. long	34,080	31,240	28,400	25,560	22,720
46 ft. 6 in.	50 ft. 6 in. long	38,880	35,640	32,400	29,160	25,920
50 ft. 6 inches in length.		48,000	44,000	40,000	36,000	32,000

		When the Minimum Carload Weight provided in the Classification for the Article shipped is:				
		15,000 lb. Charge not less than	14,000 lb. Charge not less than	12,000 lb. Charge not less than	11,000 lb. Charge not less than	10,000 lb. Charge not less than
Cars over	And not over	lb.	lb.	lb.	lb.	lb.
36 ft. 6 in.	37 ft. 6 in. long	15,450	14,420	12,360	11,330	10,300
37 ft. 6 in.	38 ft. 6 in. long	15,900	14,840	12,720	11,660	10,600
38 ft. 6 in.	39 ft. 6 in. long	16,350	15,260	13,080	11,990	10,900
39 ft. 6 in.	40 ft. 6 in. long	16,800	15,680	13,440	12,320	11,200
40 ft. 6 in.	41 ft. 6 in. long	17,550	16,380	14,040	12,870	11,700
41 ft. 6 in.	42 ft. 6 in. long	18,300	17,080	14,640	13,420	12,200
42 ft. 6 in.	46 ft. 6 in. long	21,300	19,880	17,040	15,620	14,200
46 ft. 6 in.	50 ft. 6 in. long	24,300	22,680	19,440	17,820	16,200
50 ft. 6 inches in length.		30,000	28,000	24,000	22,000	20,000

Note 1.—The length of cars referred to in this Rule is based on the platform measurement of flat cars and inside measurement of all other cars, except that on refrigerator cars having ice boxes constructed in ends thereof extending from top of car partially to floor thereof, the length shall be computed from the inward side of the ice box.

The platform measurement of flat cars and the inside measurement of other cars must be shown on manifests and transfer slips to connecting lines.

Fractions of an inch will not be counted in computing length of cars.

Note 2.—Time will be computed from the first day after the day on which order is received by carrier. In computing time Sundays and legal holidays (national, state and municipal) will be included. When the last day of six day period is a Sunday or a legal holiday, the day following will be considered the last of the six days. When a legal holiday falls on a Sunday, the following Monday will be treated as a legal holiday.

Note 3.—When a shipper orders a car of specified length within and including the minimum and maximum lengths for which the same minimum carload weight is provided in Section F, the furnishing by carrier of a car of any length between and including such minimum and maximum lengths will be a fulfillment of shipper's order.

Note 4.—For lengths of cars see the Official Railway Equipment Register, I. C. C.-R. E. R. No. 39 and P. S. C.-2 N. Y.-R. E. R. No. 39 (issued by G. P. Conard, Agent) and reissues thereof.

§ 8. Graduated Carload Minimum Weight Rule in Southern Classification.

Where the carload minimum weight established for an article in its item rating in the current Southern Classification is 20,000 pounds or less, the following scale of graduated carload minimum weights according to car size are provided for in Rule 24:

RULE 24:

"Section 1. Unless otherwise specified in the Classification, the minimum carload weight of all articles shall be 24,000 pounds; or twelve tons, where the rate applies per net or gross ton.

"When a minimum carload weight of more than 20,000

pounds is specified, such minimum will apply regardless of the length of the car used.

"When a minimum carload weight of 20,000 pounds or less is specified, such minimum will apply when cars of 36 feet 6 inches in length or less are used; but when cars exceeding 36 feet 6 inches in length are used, the minimum carload weights shall be increased in accordance with the following table:

Lengths of Cars.		Percentage Increase	For illustration, when the Minimum Weight provided for the Article Shipped is								
			20,000 lb. Charge not less than	18,000 lb. Charge not less than	16,000 lb. Charge not less than	15,000 lb. Charge not less than	14,000 lb. Charge not less than	12,000 lb. Charge not less than	11,000 lb. Charge not less than	10,000 lb. Charge not less than	8,000 lb. Charge not less than
Over	And not over		Lb.	Lb.	Lb.	Lb.	Lb.	Lb.	Lb.	Lb.	Lb.
36 ft. 6 in.	38 ft. 6 in.	10	22,000	19,800	17,600	16,500	15,400	13,200	12,100	11,000	8,800
38 ft. 6 in.	40 ft. 6 in.	25	25,000	22,500	20,000	18,750	17,500	15,000	13,750	12,500	10,000
40 ft. 6 in.	42 ft. 6 in.	40	28,000	25,200	22,400	21,000	19,600	16,800	15,400	14,000	11,200
42 ft. 6 in.	44 ft. 6 in.	55	31,000	27,900	24,800	23,250	21,700	18,600	17,050	15,500	12,400
44 ft. 6 in.	46 ft. 6 in.	65	33,000	29,700	26,400	24,750	23,100	19,800	18,150	16,500	13,200
46 ft. 6 in.	48 ft. 6 in.	70	34,000	30,600	27,200	25,500	23,800	20,400	18,700	17,000	13,600
48 ft. 6 in.	50 ft. 6 in.	80	36,000	32,400	28,800	27,000	25,200	21,600	19,800	18,000	14,400
50 ft. 6 inches in length.....		150	50,000	45,000	40,000	37,500	35,000	30,000	27,500	25,000	20,000

"Actual weight must be charged for when in excess of the minimum weight.

"When Live Stock is loaded in cars over 36 feet 6 inches in length, the per car rates shall be increased in accordance with the following table:

	Percentage
Cars over 36 feet 6 inches and not over 38 feet 6 inches in length	5
Cars over 38 feet 6 inches and not over 40 feet 6 inches in length	10
Cars over 40 feet 6 inches and not over 42 feet 6 inches in length	25
Cars over 42 feet 6 inches and not over 44 feet 6 inches in length	35
Cars over 44 feet 6 inches in length.....	40

"The length of cars referred to in this rule is based on the platform measurement of flat cars and inside measurement of all other cars. . . .

"If the carrier, for its convenience, furnishes a car of greater length than required to transport a shipment, the minimum carload weight for which is 20,000 pounds or less, charges will be assessed at the carload minimum weight provided for a car of size required, if, however, the car is fully loaded by the shipper or the weight exceeds by 20 per cent the minimum weight for the car ordered, charges shall be assessed upon basis of the minimum weight for the car used, but not less than actual weight at carload rate."

In all such cases, waybills must bear reference to this rule.

§ 9. Graduated Carload Minimum Weight Rule in Western Classification.

When articles in their item ratings, in current Western Classification, are "Subject to Rule 6-B," the following scale of carload minimum weights according to car size is provided:

"B. Section 1. Minimum weights provided in this classification will apply on all sizes of cars, except that premium and deduction charges will be applied to light and bulky articles designated by note, as 'Subject to Rule 6-B,' whether loaded in box cars or on open cars.

"Section 2. Upon such light and bulky articles, the standard car will be 36 feet in length, inside measurement, 3 per cent per foot to be added for each foot in excess of 36 feet, and 3 per cent per foot to be deducted for each foot less than 36 feet, with a minimum of 91 per cent, all percentages to be based on inside dimensions. In applying premium and deduction charges, fractions of a foot, six inches or less, to be disregarded. (See Table of Percentages and Minimum Weights, on following page.)"

Table showing minimum C. L. weights applicable under Rule 6-B (see preceding page), to light and bulky freight shipped in cars of different lengths (inside dimensions).

SPECIAL FREIGHT SERVICES

Length of car (Dimensions inclusive)	33 ft. 6 in. and under	Over 33 ft. 6 in. to and inc. 34 ft. 6 in.	Over 34 ft. 6 in. to and inc. 35 ft. 6 in.	Over 35 ft. 6 in. to and inc. 36 ft. 6 in.	Over 36 ft. 6 in. to and inc. 37 ft. 6 in.	Over 37 ft. 6 in. to and inc. 38 ft. 6 in.
Minimum weights	91%	94%	97%	100%	103%	106%
5,000 lb.	4,550	4,700	4,850	5,000	5,150	5,300
8,000 lb.	7,280	7,520	7,760	8,000	8,240	8,480
9,000 lb.	8,190	8,460	8,730	9,000	9,270	9,540
10,000 lb.	9,100	9,400	9,700	10,000	10,300	10,600
11,000 lb.	10,010	10,340	10,670	11,000	11,330	11,660
12,000 lb.	10,920	11,280	11,640	12,000	12,360	12,720
14,000 lb.	12,740	13,160	13,580	14,000	14,420	14,840
15,000 lb.	13,650	14,100	14,550	15,000	15,450	15,900
16,000 lb.	14,560	15,040	15,520	16,000	16,480	16,960
18,000 lb.	16,380	16,920	17,460	18,000	18,540	19,080
20,000 lb.	18,200	18,800	19,400	20,000	20,600	21,200
22,000 lb.	20,020	20,680	21,340	22,000	22,660	23,320
24,000 lb.	21,840	22,560	23,280	24,000	24,720	25,440
30,000 lb.	27,300	28,200	29,100	30,000	30,900	31,800

Length of car (Dimensions inclusive)	Over 38 ft. 6 in. to and inc. 39 ft. 6 in.	Over 39 ft. 6 in. to and inc. 40 ft. 6 in.	Over 40 ft. 6 in. to and inc. 41 ft. 6 in.	Over 41 ft. 6 in. to and inc. 42 ft. 6 in.	Over 42 ft. 6 in. to and inc. 43 ft. 6 in.	Over 43 ft. 6 in. to and inc. 44 ft. 6 in.
Minimum weights	109%	112%	115%	118%	121%	124%
5,000 lb.	5,450	5,600	5,750	5,900	6,050	6,200
8,000 lb.	8,720	8,960	9,200	9,440	9,680	9,920
9,000 lb.	9,810	10,080	10,350	10,620	10,890	11,160
10,000 lb.	10,900	11,200	11,500	11,800	12,100	12,400
11,000 lb.	11,990	12,320	12,650	12,980	13,310	13,640
12,000 lb.	13,080	13,440	13,800	14,160	14,520	14,880
14,000 lb.	15,260	15,680	16,100	16,520	16,940	17,360
15,000 lb.	16,350	16,800	17,250	17,700	18,150	18,600
16,000 lb.	17,440	17,920	18,400	18,880	19,360	19,840
18,000 lb.	19,620	20,160	20,700	21,240	21,780	22,320
20,000 lb.	21,800	22,400	23,000	23,600	24,200	24,800
22,000 lb.	23,980	24,640	25,300	25,960	26,620	27,280
24,000 lb.	26,160	26,880	27,600	28,320	29,040	29,760
30,000 lb.	32,700	33,600	34,500	35,400	36,300	37,200

Length of car (Dimensions inclusive)	Over 44 ft. 6 in. to and inc. 45 ft. 6 in.	Over 45 ft. 6 in. to and inc. 46 ft. 6 in.	Over 46 ft. 6 in. to and inc. 47 ft. 6 in.	Over 47 ft. 6 in. to and inc. 48 ft. 6 in.	Over 48 ft. 6 in. to and inc. 49 ft. 6 in.	Over 49 ft. 6 in. to and inc. 50 ft. 6 in.
Minimum weights	127%	130%	133%	136%	139%	142%
5,000 lb.	6,350	6,500	6,650	6,800	6,950	7,100
8,000 lb.	10,166	10,400	10,640	10,880	11,120	11,360
9,000 lb.	11,430	11,700	11,970	12,240	12,510	12,780
10,000 lb.	12,700	13,000	13,300	13,600	13,900	14,200
11,000 lb.	13,970	14,300	14,630	14,960	15,290	15,620
12,000 lb.	15,240	15,600	15,960	16,320	16,680	17,040
14,000 lb.	17,780	18,200	18,620	19,040	19,460	19,880
15,000 lb.	19,050	19,500	19,950	20,400	20,850	21,300
16,000 lb.	20,320	20,800	21,280	21,760	22,240	22,720
18,000 lb.	22,860	23,400	23,940	24,480	25,020	25,560
20,000 lb.	25,400	26,000	26,600	27,200	27,800	28,400
22,000 lb.	27,940	28,600	29,260	29,920	30,580	31,240
24,000 lb.	30,480	31,200	31,920	32,640	33,360	34,080
30,000 lb.	38,100	39,000	39,900	40,800	41,700	42,600

CHAPTER IV.

WEIGHTS AND WEIGHING—(Continued).

- § 1. The Interstate Commerce Commission on Rule 6-B of the Western Classification.
- § 2. Capacity of Car Furnished Greater Than That of Car Ordered.
- § 3. Capacity of Car Furnished Less Than That of Car Ordered.
- § 4. Two Cars for One Rule.
- § 5. Follow-Lot Shipments.
- § 6. Minimum Weights Must be Published.
- § 7. Through Carload Minimum to be Provided in Tariffs of Rates.
- § 8. Cars Must be Capable of Carrying Minimum Weight Prescribed.
- § 9. Relation of Minimum Weights to Physical Loading Capacity of Cars.

CHAPTER IV.

WEIGHTS AND WEIGHING—(Continued).

§ 1. The Interstate Commerce Commission on Rule 6-B of Western Classification.

The Interstate Commerce Commission, in its report on the suspension and investigation of Western Classification No. 51, dealt at length with the propriety of Rule 6-B thereof, effecting a graduated scale of carload minimum weights according to car size, declaring the rule to be "correct and as tending toward efficiency and economy in loading.

"Western Classification No. 1, effective April 1, 1887, provides for commodities which are now subject to Rule 6-B, a flat minimum regardless of the length of the car. These minima were slightly higher than the minima now applicable to a standard car. The ratings were generally the same as now.

"The 'premium and deduction' charge was first introduced into Western Classification No. 21, effective September 15, 1895, where it was applied only to specific commodities. For instance, buggies and light vehicles were given a third-class rating with minimum of 12,000 pounds for cars not exceeding 45 feet in length, outside measurement, subject to a deduction of 5 per cent per foot on cars less than 45 feet in length and an additional charge of 5 per cent per foot on cars exceeding 45 feet. In No. 31, effective January 1, 1901, buggies and light vehicles were raised to second class with the same mini-

mum and premium and deduction charges. No. 33, effective April 1, 1902, established Rule 6-C, which contained practically all the provisions now embraced in Rule 6-B. The initial minimum, or the minimum for the standard car, was made somewhat lower in this classification than the flat minima which had been applicable theretofore on certain commodities. For example, on bank, store and office furniture the flat minimum prior to April 1, 1902, was 12,000 pounds; on light vehicles it was 12,000 pounds. In No. 33 these were given a minimum of 10,000 pounds for a standard car of 36 feet in length and made subject to Rule 6-C. These provisions were incorporated in Rule 6-B of No. 34, effective October 1, 1902, which is the first time that Rule 6-B, with its present contents, appeared in the classification. It has been continued from that time to the present.

"Practically no objections have been raised to an increase in the minimum with an increase in the size of the car, especially in view of a somewhat general practice of carriers, confirmed by this Commission, to the effect that if a carrier, for its own convenience, furnishes a car of a larger size than the one ordered, or two smaller cars, the minimum applicable to the size of car ordered shall govern. The provision that the minimum applicable to the size of car ordered shall govern should be made universal. With that purpose in view, a rule in accordance with such practice should be included in the classification. The principle of increasing the minimum weight with an increase in the size of the car must be recognized as correct and as tending toward efficiency and economy in loading. Without such a provision the incentive is not always present to utilize car space to the fullest extent practicable. But having said this there remain two vital, fundamental problems, the one dealing with the size of the steps or

gradations through which the minimum shall be advanced with increasing size of the car and the other having to do with what may be called the initial minimum applicable to shipments in the standard car and which constitutes the base of the sliding scale.

"The steps of advance in Rule 6-B are based directly upon increases in the length of cars, the rule providing an increase in the minimum weight for every linear foot. For all articles or commodities which by their shape, or lack of definite shape, are capable of being loaded into all classes of lengths, such a rule seems to fit exactly. It is obvious that for all classes of grain in bulk, for instance, the loading capacity of the car increases directly with both its length and its cubical contents. Every addition to any one of the three dimensions means a possible increase in the weight of the load. This, however, is not true of articles that in their transportation form have certain rigid cubical dimensions. For boxes having dimensions of $1\frac{1}{2}$ feet by 2 feet by 3 feet, an increase of 1 foot in the length of a car will not result in an increased loading capacity, for the reason that the package dimensions are not exact divisors of the increased car dimensions. The same suggestion would apply to articles like baled hay or straw, excelsior, and practically all other articles that have a general rectangular shape. In all such cases there is an increase in the loading capacity with an increase in the size of the car only to the extent to which the increased dimensions permit of an increased number of tiers of bales. This can happen only when the car dimensions are integral multiples of package dimensions. Fractions of packages can not be loaded generally. This class of articles must be very large, and a consideration of loading to the full capacity of the car would suggest that the scale

representing increases in minimum with the increased size of the car should vary for different articles, the standard package for each commodity being used as the decisive factor in establishing the steps of the scale. It is apparent that shippers of hay will be obliged to adopt certain standard bales if such standards have not already been established, or pay for car space which they can not fill. It would be as unreasonable to expect carriers to work out sliding scales for a capricious variety of sizes of bales as it is reasonable, in our judgment, to adjust the scale of minima to the standard bale. We are therefore of the opinion that the principle of Rule 6-B is just and proper, but that the form of expression of the rule must vary with the articles to which it is to be applied, using linear feet singly or in multiples or cubical contents as may best fit each commodity.

"Having said this, we wish also to suggest that the restriction of the present rule to light and bulky articles is probably not defensible. There is very little in the record bearing upon this point, but a brief consideration of the controversies centering about Rule 6-B suggests that some form of sliding scale should be made to apply to all articles, whether light and bulky or otherwise.

"The vital question then remaining relates to the initial minimum. What this shall be can only be determined by a careful investigation regarding each article. For light and bulky articles the initial minimum must clearly be less than it is for heavy articles; and it must vary with the different degrees of lightness and bulkiness. The graduate scale should be made to apply whenever the minimum fixed is equivalent to the loading capacity of the small car.

"One of the big things in the present controversy relates to agricultural implements. Since 1887 the Western

Classification has carried agricultural implements at the following minima :

	Pounds
No. 14, effective January 1, 1887.....	20,000
No. 19, effective January 1, 1895.....	24,000
No. 21, effective September 15, 1895.....	20,000
No. 45, effective November 1, 1908, I. C. C. No. 3.....	24,000

The latter minimum having been carried forward in succeeding issues to the present time.

"As noted above, No. 51 makes Rule 6-B applicable to the minimum of 24,000 pounds; and chiefly out of this application have arisen the many complaints of the agricultural implement people. While the classification has provided this minimum of 24,000 pounds, the Western Trunk Line rules, under which practically all these shipments have moved for an indefinite period past, have provided for a minimum of 20,000 pounds. Only one construction can be placed upon this action of the Western Trunk Line carriers, namely, that in their judgment the minimum provided by the Western Classification was too high and that under the conditions prevailing in the various territories which the western carriers serve 20,000 pounds was the proper minimum. Upon the present record we are not convinced that 20,000 pounds, so long recognized by western carriers, is no longer proper. On the contrary, we think that the proposed application of Rule 6-B to a minimum of 24,000 pounds has not been justified and that the initial minimum for the application of this rule, or some acceptable modification of it, on shipments of agricultural implements should be 20,000 pounds for a 36-foot car.

"In this connection much was said regarding a commercial minimum as opposed to or contrasted with the physical minimum. The physical minimum is that mini-

minimum which represents the weight or bulk quantities which can be loaded into a car from the point of view of space or the theoretical number of packages capable of being loaded into a car, determined by dividing the cubical contents of the car by the cubical contents of one of the packages, multiplied by the weight of the package, possibly with some consideration of the dimensions of the package. The commercial minimum is that minimum which represents the unit of purchase and sale of the commodity in question as established by custom and the conditions existing in that trade and in the territory in which it governs at the time the minimum was established. The physical minimum would consider only physical loading capacity, while the commercial minimum would consider in addition trade requirements, conditions of manufacture, distribution and consumption. While there doubtless are many commodities to which a rigid physical minimum test may be applied without hardship to anyone, there are many others to which such a test can not fairly be applied. Even in the case of a heavy commodity, like coal, to which the physical minimum rule might be supposed to be applicable quite as generally as to such articles as crushed stone and iron ore, an excessively high minimum, say 80,000 pounds, would prevent the shipping of coal in carload lots to many small communities. For purposes of illustration it might be assumed that a certain carrier had discarded all equipment except cars of 80,000 pounds and over, and that it had established a minimum on coal of 80,000 pounds. The result of this would inevitably be that every small community along the line of that carrier would be compelled to ship in its coal in less-than-carload quantities and at less-than-carload rates. This whole question has centered, so far as this proceeding is concerned, primarily around agricultural implements. It may be helpful to

make a similar assumption regarding this class of traffic. Will it be supposed for one moment that agricultural implements would be shipped in carload lots with a minimum of 80,000 pounds to any but the largest distributive centers? This is a somewhat violent assumption, because the gap between the 24,000 pounds in Classification No. 51 and 80,000 pounds is a great one, but it drives home the point that mere physical capacity can not in fairness be permitted to govern universally. This Commission has constantly to deal with situations alleged to be comparable with or to arise out of commercial conditions. If individual rates, with respect to which the Commission is required to make orders, or which the carriers establish, may be determined, as they have been, by so-called commercial conditions, why should not minimum weights be affected and established in the light of these same conditions? It is our conclusion, therefore, that carriers should take into consideration both the physical minimum and the commercial minimum in deciding upon a classification minimum to govern carload shipments throughout the country and provide themselves with cars of corresponding sizes. What these shall be must be determined in the light of all the facts applicable to each individual case."

§ 2. Capacity of Car Furnished Greater Than That of Car Ordered.

The Commission holds it to be the duty of every carrier subject to the act to incorporate in its tariff regulations a rule to the effect that when the carrier can not promptly furnish a car of the capacity or dimensions ordered by the shipper, and for its own convenience does provide a car of greater capacity or dimensions than that ordered, such furnished car may be used on the basis of the minimum carload weight fixed in the tariffs for the car of the dimen-

sions or capacity ordered by the shipper, provided the shipment could have been loaded into or upon a car of the capacity or size ordered.

It is now the general practice of the carriers, confirmed by the Commission, that if a carrier for its own convenience furnishes a car of larger size than the one ordered, or two smaller cars, the minimum applicable to the size of the car ordered shall govern, and the Commission has recommended that this provision should be made universal.

And in cases where the carrier furnishes a larger car than what the shipper orders and the tariff contains no provision assessing charges upon a basis of a minimum for the car ordered, the Commission will award reparation for such failure, it being also declared by the Commission that the tariffs of a carrier are unreasonable and unlawful in failing to provide that when a larger capacity car is furnished instead of the smaller capacity demanded, the minimum applicable to the smaller capacity car shall be observed.

And in a case where the larger capacity car is furnished than the capacity of car ordered, but the actual weight of the shipment is more than the minimum established for the smaller capacity car ordered and less than the minimum for the larger capacity car furnished, charges should be assessed upon the actual weight of the shipment only when loaded into the larger capacity car furnished by the carrier.

In re Suspension and Investigation of Western Classification
No. 51, 25 I. C. C. Rep. 442, 480.

Noble vs. B. & O. R. R. Co., 20 I. C. C. Rep. 72.

Beggs vs. Wabash R. R. Co., 16 I. C. C. Rep. 208.

Torrey Cedar Co. vs. C. & N. W. R. R. Co., Unreported Op.
420.

I. C. C. Tariff Circular 18-A, Rule 66-a, December 7, 1909.

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 274.

See also—

Noble vs. B. & O. R. R. Co., 22 I. C. C. Rep. 432, 438.

Milburn Wagon Co. vs. L. S. & M. S. Ry. Co., 22 I. C. C. Rep. 511.

Hull & Co. vs. M. P. Ry. Co., 21 I. C. C. Rep. 486.

Peerless Agencies Co. vs. A. T. & S. F. Ry. Co., 17 I. C. C. Rep. 218.

Kaye & Carter Lumber Co. vs. M. & I. Ry. Co., 17 I. C. C. Rep. 209, 211.

Hanna Coal Co. vs. N. P. Ry. Co., 16 I. C. C. Rep. 289.

General Chemical Co. vs. N. & W. Ry. Co., 15 I. C. C. Rep. 349, 350.

American Lumber & Mfg. Co. vs. S. P. Co., 14 I. C. C. Rep. 561, 562.

Bentley vs. C. & N. W. Ry. Co., Unreported Op. 181.

Lining Implement Co. vs. C. & N. W. Ry. Co., Unreported Op. 414.

§ 3. Capacity of Car Furnished Less Than That of Car Ordered.

If a car of smaller capacity than that ordered by the shipper is furnished, the rule should be to the effect that it may be used on the basis of actual weight when loaded to its full visible capacity, or that that portion of the shipment which can not be loaded into the smaller car furnished shall be taken in another car and the shipment treated as a whole on the basis of the minimum fixed for the car ordered by the shipper; and that if the carrier is unable to furnish a car of large dimensions, ordered by the shipper, it may furnish two smaller cars which may be used on the basis of the minimum fixed for the car ordered, it being understood that the shipper may not order a car of dimensions or capacity for which a minimum is not provided in the carrier's tariffs.

In all such cases the capacity of the car ordered, the date

of such order, the number, initials and capacity of car furnished should be stated on the shipping ticket, bill of lading and carrier's waybill.

In the case of controversy between shippers and carriers caused by absence of such rule from the tariffs which provide graduated carload minimum weights for cars of different sizes, the Commission will regard such tariffs as *prima facie* unreasonable.

It is the duty of the carriers to provide reasonable facilities for transportation, and if they can not furnish equipment to move the carload traffic provided for in their tariffs it is clearly their duty to provide some other method of transporting as one shipment when so offered, and at the rate named for such carload weight when tendered by the shipper.

It is the objective in establishing a minimum weight for the transportation of light and bulky articles, in carloads, to establish such a quantity as can ordinarily be loaded. This is in all things a correct rule. Applying this rule to furniture, as was the case in *Montague & Co. vs. A. T. & S. F. Ry. Co. et al.*, 17 I. C. C. Rep. 72, 76, the minimum applicable to furniture of various kinds need not be so low that reed furniture could be loaded to that minimum; but it should be sufficiently low so that furniture of all kinds, as generally shipped, can ordinarily comply with it.

Under the transcontinental tariffs no distinction was made in these carload minimum weights between cars of different length. In point of fact the cars actually used in that service varied materially in loading capacity. The standard car, 36 feet in length, by $8\frac{1}{2}$ feet in width and 8 feet in height, has a cubical capacity of 2,448 feet. The ordinary 40-foot furniture car, $8\frac{1}{2}$ feet wide by $8\frac{1}{2}$ feet high, has a cubical capacity of 2,890 feet. An ordinary

50-foot furniture car, 8 feet 7 inches wide by 9 feet 3 inches high, has a cubical capacity of 3,969 feet. It was plain, therefore, if the rule stated above was correct, the minimum carload weight might vary according to the cubical capacity of the car.

In the Official Classification territory this principle is recognized, although the differences in minimum weights do not correspond accurately with the differences in cubical capacity of the cars. The minimum in this territory for mixed furniture is 10,000 pounds for cars 36 feet in length, 12,500 pounds for cars 40 feet in length, 15,000 pounds for cars 50 feet in length.

The question before the Commission in the Montague case, *supra*, was whether this transcontinental tariff was unlawful because it failed to state different minimum weights for cars of different lengths. The Commission held that a tariff is not *per se* unlawful for that reason. If, for example, a minimum weight of 30,000 pounds were established applicable to the transportation of coal, it would not be an unlawful provision, for the reason that coal can be loaded into any sort of a car in ordinary use, up to 30,000 pounds, and no discrimination would therefore result. While such a provision might be a foolish one, it would not be in violation of the Act to Regulate Commerce.

Montague & Co. vs. A. T. & S. F. Ry. Co. et al., 17 I. C. C. Rep. 72, 76. (Compare with Peerless Agencies Co. vs. A. T. & S. F. Ry. Co., 17 I. C. C. Rep. 218.)

Durham Coal & Iron Co. et al. vs. Cent. of Ga. Ry. Co. et al., 34 I. C. C. Rep. 10, 12.

See also—

Atlas Lumber & Shingle Co. vs. N. P. Ry. Co., 26 I. C. C. Rep. 313, 314.

Weber & Co. vs. H. T. & W. R. R. Co., Unreported Op. A-23.

Noble vs. B. & O. R. R. Co., 22 I. C. C. Rep. 432, 438.

Maldonado & Co. vs. Ferrocarril de Sonora, 18 I. C. C. Rep. 65, 67.

Pope Mfg. Co. vs. B. & O. R. R. Co., 17 I. C. C. Rep. 400, 403.

Slimmer & Thomas Co. vs. Penna. Co., 16 I. C. C. Rep. 531, 533.

Wheeler Lumber, Bridge & Supply Co. vs. S. P. Co., 16 I. C. C. Rep. 547, 548.

Compare—

Suffern, Hunt & Co. vs. I. D. & W. Ry. Co., 7 I. C. C. Rep. 255.

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 273.

§ 4. Two Car for One Rule.

Where carriers in their tariff establish minimum weights for cars of large size, they should further provide in the tariffs that when such large-sized cars are not available, two smaller cars may be used under such circumstances as will fairly protect the minimum weight established for the larger car; but if the same minimum weight is established irrespective of size of car, the two car for one rule will not apply. In other words, if a large car is ordered and two smaller cars are furnished by the carrier in lieu thereof, the carrier should protect shipments on the basis of the minimum weight applicable to the car ordered, but in strict conformity with tariff provisions.

Noble vs. B. & O. R. R. Co., 22 I. C. C. Rep. 432.

McLaughlin vs. T. & P. Ry. Co., 26 I. C. C. Rep. 307, 308.

Riverside Mills vs. G. R. R., 25 I. C. C. Rep. 434.

Goodman Mfg. Co. vs. C. B. & Q. R. R. Co., 21 I. C. C. Rep. 583.

Minneapolis Threshing Machine Co. vs. C., M. & St. P. Ry. Co., 21 I. C. C. Rep. 181.

Scudder vs. T. & P. Ry. Co., 21 I. C. C. Rep. 60.

Consl. Water Power Paper Co. vs. S. P. L. A. & S. L. R. R. Co., 20 I. C. C. Rep. 169.

Jobbins vs. C. & N. W. Ry. Co., 17 I. C. C. Rep. 297, 299.

Springer vs. E. P. & S. W. R. R. Co., 17 I. C. C. Rep. 322, 323.

- Milwaukee Falls Chair Co. vs. C., M. & St. P. Ry. Co., 16 I. C. C. Rep. 217, 218.
 Racine-Sattley Co. vs. C., M. & St. P. Ry. Co., 16 I. C. C. Rep. 488, 489.
 Kaye & Carter Lbr. Co. vs. M. & I. Ry. Co., 16 I. C. C. Rep. 285, 287.
 Indianapolis Freight Bureau vs. C. C. C. & St. L. Ry. Co., 16 I. C. C. Rep. 254, 258, 260.
 Indianapolis Freight Bureau vs. C. C. C. & St. L. Ry. Co., 16 I. C. C. Rep. 56, 68.
 Indianapolis Freight Bureau vs. C. C. C. & St. L. Ry. Co., 15 I. C. C. Rep. 504, 526.
 Falls & Co. vs. C. R. I. & P. Ry. Co., 15 I. C. C. Rep. 269, 272.
 Weimer & Rich vs. C. & N. W. Ry. Co. et al., 12 I. C. C. Rep. 462.

See also—

- Bradford-Kennedy Co. vs. N. P. Ry. Co., Unreported Op. 455.
 Moline Plow Co. vs. C., M. & St. P. Ry. Co., Unreported Op. 419.
 Paté vs. C. & N. W. Ry. Co., Unreported Op. 417.

Compare—

- I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 273.

§ 5. Follow-Lot Shipments.

The "follow-lot" privilege consists of protecting on the basis of the minimum weight established for the car ordered by shipper of the overflow quantity of the shipment caused by the carrier furnishing a smaller car than that ordered. In the case of machinery shipments, moving under Rule 24 of Western Classification No. 51, the Commission held that it was not unreasonable to restrict the "follow-lot" privilege to machinery where the minimum weight was 30,000 pounds or more.

In re Suspension and Investigation of Western Classification No. 51, 25 I. C. C. Rep. 442, 484, 492, 493, 494.

In this connection the Commission ruled that "follow-lot" shipments should be marked by the shipper of the

"follow-lot" whenever they constituted an overflow, resulting from the failure of the shipper to designate the dimensions of cars required for his shipments, but where the shipment can be loaded in a car of the size ordered by the shipper and two cars are furnished by the carrier, the marking, where necessary, should be done by the carrier.

§ 6. Minimum Weights Must be Published.

The minimum weight upon which the carload rate is based is a part of the rate, because the charges on the shipment when entitled to a carload rate can only be determined by such minimum weight. The publication, posting and filing with the Commission of the carload rate and the carload minimum weight are, therefore, equally necessary, and it is also equally necessary that both be observed.

I. C. C. Tariff Circular 18-A, Rule No. 66, May 12, 1908.

Sunderland Bros. vs. M. K. & T. Ry. Co., 18 I. C. C. Rep. 425, 426.

Durham Coal & Iron Co. vs. Cent. of Ga. Ry. Co., 34 I. C. C. Rep. 10, 12.

§ 7. Through Carload Minimum to be Provided in Tariffs of Rates.

Where two or more carriers publish a tariff of joint through rates, they must publish in connection therewith one carload minimum weight for the through movement under the carload rate. This ruling is not to be understood, however, as condemning the publication in joint tariffs, and the use of through rates, made up in combination on a specific base point and providing one minimum carload weight in connection with the specified portion of the rate up to the base point and a different carload

minimum weight in connection with the specified portion of the rate beyond the base point.

I. C. C. Tariff Circular 18-A, Rule No. 66, May 12, 1908.

See also—

Pacific Pur. Co. vs. C. & N. W. Ry. Co. et al., 12 I. C. C. Rep. 549.

See also—

Tariffs.

§ 8. Cars Must be Capable of Carrying Minimum Weight Prescribed.

A carrier in defining a carload quantity and fixing the carload rate therefor, should furnish a car adapted to carry properly the quantity so designated. (1) For a carload rate and a minimum weight for a car of definite dimensions, when lawfully published in the tariffs of a carrier, constitute an open offer to the shipping public to move their merchandise on those terms; and it would be wholly unsound in principle to permit the carrier to impose additional transportation charges on the shipper who orders a car of a capacity, length or dimensions specified in the tariffs, simply because the carrier is not provided with cars of the dimensions ordered. (2)

The obligation resting upon the carrier under the law is to carry the merchandise of the shippers on the basis of the published rates and minimum weights, and to use therefor whatever cars are available for that purpose, and this obligation must be covered in the published tariffs of the carrier by proper rule to that effect, and the absence of such a rule in the tariffs would make them unreasonable and unlawful. (3)

Thus, the rule is well laid that the established carload minimum weight should never exceed the capacity of the

car, (4) and where a car is loaded to its visible capacity, but transportation charges are assessed on the carload minimum weight which exceeds such visible capacity, it has been held by the Commission that such charges are unreasonable to the extent assessed above actual weight of the shipment. (5) Nor can there be any justification for a carload minimum weight of twice the weight of the commodity ordinarily loaded in a car. (6)

If a carrier restricts the loading capacity of a car to less than its rated minimum weight, the charges should be assessed on the actual weight of the shipment and not on such minimum. (7) Moreover, it is improper for carriers to regulate the amount of freight charges by prescribing minimum weights which manifestly cannot be loaded in the car. (8) But, if the tariffs provide that the carload minimum weight established is the marked capacity of the car, and the shipper's commodity when loaded to the visible capacity of the car is less in weight than the marked capacity of the car, he cannot recover on the basis of the actual weight of his shipment. (9)

Thus, under a published tariff naming a joint through rate of \$3.97 per gross ton, and providing that the minimum weight for a carload shipment thereof should be the "marked capacity of the car," a shipper forwarded a carload of sulphide of iron, weighing 53,500 pounds. He ordered a 60,000-pound capacity car, but the initial carrier found its convenience best served by furnishing the shipper with an 80,000-pound capacity car, and charges were collected on the basis of the 80,000 pounds instead of 60,000 pounds. In passing upon claim for reparation, the Commission said:

"Assuming, as we do, that the matter has come before us in this form in good faith (referring to agreed statement of facts), we have no hesitation in holding that the

complainant is entitled to reparation on the basis of a 60,000-pound shipment. The rate as published amounts in substance to an offer to the shipping public by the three carriers forming the through route and naming the joint through rate to transport sulphide of iron between the points in question in any car of recognized standard dimensions or capacity that the shipper may demand if suitable for the carriage of the commodity that he has ready for shipment. This offer the law requires the carrier from every point of view to make good, and if a car of a particular standard size or capacity is not available upon the reasonable demand of a shipper for a car of that size, it is the duty of the carriers nevertheless to accept and carry the shipment in any car or cars that are available for the movement, assessing the charges on the basis of the marked capacity of a car of the dimensions or capacity demanded. It is scarcely necessary to observe that it lies within the power of carriers to protect themselves against unreasonable demands by shippers under such a rule by confining its operation, under proper notice in their tariffs, to cars having a marked capacity between certain maximum and minimum limitations. An analogous question arose in *Pacific Purchasing Company vs. Chicago & Northwestern Railway Company*, 12 I. C. C. Rep. 549, and the rule then made would seem to control here." (10)

A shipper is entitled to ship at the rates offered in a carrier's legal tariffs. If such tariffs provide for minimum carload weights as the basis for such rates, the shipper is entitled to cars capable of carrying such minimum weights. The shipper has the right to call upon the carrier for a car which will hold the minimum weight prescribed in the tariff and the carrier is obliged to carry such car at the rate and minimum provided in the tariff. If the carrier does not have such car, it is entirely proper that it

should permit the use of two smaller cars in lieu of the one which it offered in its tariffs, but could not supply. A connecting line would have knowledge from the billing that these two cars were substituted for one, and it need not accept the freight and transport it in such equipment, but may properly transfer the two carloads into one of its own, and so continue the journey.

There are joint responsibilities assumed by carriers when they publish a joint rate, and one of these obligations is to treat that rate as a unit and to treat the shipment thereunder as a unit, and this, not because of any contractual relation between the shipper and the originating carrier, but because the act of the originating carrier in accepting the shipment in conformity with its tariff provisions was the act of all and each of its connections joining in that tariff. (11)

The evils which may arise under ambiguous and uncertain tariff provisions affecting the application of varying minimum weights are well illustrated in the case of *C. W. Hull Company vs. Missouri Pacific Railway Company et al.*, 21 I. C. C. Rep. 486, 487. A tariff rule providing a carload minimum weight of 50,000 pounds for brick was subject to a rule that—"Except when marked capacity of car is less, in which event the marked capacity of the car will govern"—was construed by the carrier to vary the minimum weight only when the carrier was unable to furnish cars of the prescribed capacity.

The precise meaning of this rule in relation to the prescribed minimum weight of 50,000 pounds is ambiguous and uncertain. It does not indicate under what circumstances a smaller car may be used, whether upon order from the shipper for a car of less capacity or whether at the will and for the convenience of the carrier. If the latter, it is obviously improper, said the Commission, since

under such a rule it might happen that one shipper would always be furnished with cars of 50,000 pounds capacity or greater and be obliged to pay freight on that minimum while his shipments might run several thousands of pounds under the minimum. On the other hand, it might happen that another shipper would, for the convenience of the carrier or otherwise, be always furnished with cars of less capacity and accordingly be required to pay on the lower minimum, or only on actual weight if greater than such lower minimum. Manifestly it can not be claimed that the rule fixed an invariable or even a definitely ascertainable minimum weight relative to the rates named. In this case the tariff did not contain elsewhere within itself an absolute rule, nor did it refer to any other tariff wherein an absolute rule was published. The tariff was, therefore, condemned as ambiguous and unreasonable.

If the carrier is party to a tariff naming a certain minimum weight to constitute a minimum carload quantity, applicable to certain-sized cars, such carrier is under the duty of furnishing such sized cars or other suitable equipment on the same basis of charge. This principle has been frequently affirmed by the Commission, and it is plain that to hold otherwise would result in gross discriminations against the smaller shippers who are unable to furnish their own cars, and which, under the law they are not required to do, in favor of those larger shippers who have their own equipment. (12)

- (1) *Rice & Co. vs. W. N. Y. & P. R. R. Co.*, 2 I. C. C. Rep. 389, 2 I. C. R. 298.
- (2) *Kaye & Carter Lbr. Co. vs. M. & I. R. R. Co.*, 16 I. C. C. Rep. 285, 287.
- Pacific Pur. Co. vs. C. & N. W. Ry. Co.*, 12 I. C. C. Rep. 549.
- General Chemical Co. vs. N. & W. Ry. Co.*, 15 I. C. C. Rep. 349.

- (3) Kaye & Carter Lbr. Co. vs. M. & I. R. R. Co. et al., 16 I. C. C. Rep. 285, 287.
- (4) Ozark Fruit Growers' Assn. vs. St. L. & S. F. R. R. Co., 16 I. C. C. Rep. 106, 109.
- (5) Atlas Lbr. & Shingle Co. vs. N. P. Ry. Co., 26 I. C. C. Rep. 313, 314.
- (6) Barnard Co. vs. C., M. & St. P. Ry. Co., 26 I. C. C. Rep. 91, 93.
- (7) Oregon Lumber Co. vs. O. R. R. & N. Co., 19 I. C. C. Rep. 582.
- (8) Indianapolis Freight Bureau vs. C. C. C. & St. L. Ry. Co., 15 I. C. C. Rep. 504, 527.
- (9) Cedar Hill Coal & Coke Co. vs. C. & S. Ry. Co., 14 I. C. C. Rep. 606, 608.
- (10) General Chemical Co. vs. N. & W. Ry. Co. et al., 15 I. C. C. Rep. 349, 350.
- (11) Pacific Purchasing Co. vs. C. & N. W. Ry. Co. et al., 12 I. C. C. Rep. 549, 551.
- (12) Minneapolis Threshing Machine Co. vs. C., M. & St. P. Ry. Co. et al., 21 I. C. C. Rep. 181, 182.

See also—

- Minimum Weights on Corn in Southwest, 26 I. C. C. Rep. 197.
- Struck Co. vs. L. & N. R. R. Co., 26 I. C. C. Rep. 469.
- Paducah Cooperage Co. vs. I. C. R. R. Co., 25 I. C. C. Rep. 372.
- Richards vs. N. P. Ry. Co., 21 I. C. C. Rep. 468.
- Consld. Water P. & P. Co. vs. S. P. L. A. & S. L. R. Co., 20 I. C. C. Rep. 169, 170.
- Noble vs. B. & O. R. R. Co., 20 I. C. C. Rep. 72.
- Clinton, etc., Co. vs. C. B. & Q. R. R. Co., 20 I. C. C. Rep. 416, 417.
- Montague & Co. vs. A. T. & S. F. Ry. Co., 17 I. C. C. Rep. 72, 76, 78, 84.
- Springer vs. El Paso & S. W. R. R. Co. et al., 17 I. C. C. Rep. 322.
- Hanna Coal Co. vs. N. P. Ry. Co. et al., 16 I. C. C. Rep. 289.
- American Lumber & Mfg. Co. vs. S. P. Co. et al., 14 I. C. C. Rep. 561.

Compare—

- Milburn Wagon Co. vs. L. S. & M. S. Ry. Co., 22 I. C. C. Rep. 511, 512.

- Noble vs. B. & O. R. R. Co., 22 I. C. C. Rep. 432.
 Beggs vs. Wabash R. R. Co., 16 I. C. C. Rep. 208.
 National Hay Assn. vs. L. S. & M. S. Ry. Co. et al., 9 I. C. C. Rep. 264, affirming 7 I. C. C. Rep. 255.
 I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 273.
 Thistle Mfg. Co. vs. C. M. & St. P. Ry. Co., Unreported Op. 299.
 Richmond Co. vs. G. T. Ry. Co., etc., Unreported Op. 161.

Compare also—

Dorschel Produce Co. vs. C. M. & St. P. Ry. Co., Unreported Op. A-489, holding that if a car of certain size and kind is ordered and furnished, but on account of its condition could not be loaded to its full physical capacity, the published tariff rate covering such a car must be assessed. This was a case where the car had some framework left in it by a previous shipper, and the Commission held it was the duty of the instant shipper to have removed it, or call upon the carrier to remove it. Under the facts, the Commission held the carrier not at fault for shipper's inability to load the full minimum weight.

In the recent case of Durham Coal & Iron Co. vs. Cent. of Ga. Ry. Co., 34 I. C. C. Rep. 10, 12, the Commission ruled that tariffs should provide that minimum will not apply when cars of less capacity are furnished, and that in such case the marked capacity of the car furnished and used will govern.

§ 9. Relation of Minimum Weights to Physical Loading Capacity of Cars.

While the Interstate Commerce Commission, in its more recent considerations involving the reasonableness of carload minimum weights, has conservatively departed from its earlier rule that the fixing of a carload minimum weight should relate only to the physical loading capacities of cars, and now recognizes the necessity of giving consideration to commercial minimums as well as physical minimums, (1) it must be assumed that the minimum weights estab-

lished for carload quantities by carriers are intended reasonably to correspond with the loading capacity of the car as to the particular commodities to which they relate. (2) And this assumption must not do violence to the purpose of carload minimum weights, which is a device, in one sense, for inducing shippers to make economical use of equipment. (3) Minimum weight rules should not be designed to directly affect transportation charges. (4) In this respect, it is the duty of the carrier to establish such reasonable minimum weights as the increasing or varying needs of business may demand. (5)

It is not reasonable that carriers unable to supply shippers with sufficient cars of large or average capacity should make such minimum loading requirements as cannot be practically complied with as to smaller cars, in order that they may obtain as much revenue from shipments in the smaller cars as from those in larger and superior cars. Absolute equality in every particular is impracticable in many cases, but there can and should be reasonable approximation to substantial or relative equality in all such matters. (6)

There are several methods of loading strawberries. It is generally contended by growers that in order to properly refrigerate the berries the crates should be somewhat separated, so as to leave an air space between. The bottom of the ice bunkers is about 18 inches from the bottom of the car, and the intention is to keep these bunkers filled, but, of course, the ice falls to the bottom as it melts. If too many crates are packed crosswise in a car, the lack of air space between the crates prevents refrigeration; if they are loaded too high in the car a similar result follows from the contact of the upper tier with the heated atmosphere in the upper portion of the car. As to just where

the line should be drawn for perfect refrigeration is a matter of dispute. Such was the issue presented to the Commission. Proper refrigeration depends principally upon keeping the bunkers of the car filled with ice. The producers of these berries in nearly all cases load up to the minimum for the car or slightly in excess thereof, evidently finding it to their advantage to take the chance of imperfect refrigeration rather than pay the extra charge per crate which would follow from loading below the minimum.

In the determination of a question of this kind by the Commission, however, it would seem that the interest of the shipper demands that the minimum should be fixed as high as the product may be carried under the *most* advantageous circumstances, and that the rate per hundred pounds should be made as low as possible, based on this higher minimum weight. A high minimum weight and a low rate automatically adjust themselves to the needs of the shipper, while returning to the carrier the same revenue for the use of its car, which is only fair, as the car and the refrigeration are the same to the carrier whether 480 or 567 crates are in the car. Of course, the minimum weight should never exceed the capacity of the car, and when fixed at less than that, and the shipper finds it advantageous to load still higher, it is only reasonable and just that he should pay a somewhat higher charge on the freight he does ship. (7)

In a case where the facts were that a shipper placed an order with the carrier at Kansas City, Mo., for ten cars for the shipment of wheat to Galveston, Tex., for export; on the same day the carrier placed at the shipper's elevator for loading two cars, one of them of marked capacity of 50,000 pounds and the other of marked capacity of 60,000

pounds; the shipper loaded the lesser capacity car to its maximum capacity with 55,000 pounds of wheat, and the 60,000-pound car to 66,000 pounds; and the carrier charged and collected from the shipper 18.5 cents per hundred pounds on 60,000 pounds in the 50,000-pound car, which amounted to 18.5 cents per hundred pounds on 5,000 pounds which the car did not and could not contain.

The carrier justified such charge on the ground that the published tariffs provided a minimum of 60,000 pounds on wheat transported from Kansas City to Galveston for export, and that about 81 per cent of its box cars have a capacity of 60,000 pounds, and that taking into consideration the heavy terminal expenses to which the carrier was subjected in moving export grain from Kansas City to Galveston, which expenses are determined by the carload and not by the actual weight of the grain, they were justified in making the minimum not less than 60,000 pounds, and that the rate on export grain is a very low one based on a minimum weight per car of 60,000 pounds; that if the minimum weight in their tariff should be the marked capacity of the car, in many cases cars of light capacity would be forced upon the carrier for transportation use and would result in a non-compensatory rate. Other lines, such as the Chicago, Rock Island & Pacific Railway, the Atchison, Topeka & Santa Fe Railway and the Missouri Pacific Railway companies transport wheat for export from Kansas City to New Orleans at the same rate of 18.5 cents per hundred pounds, and have in their tariffs the provision that the marked capacity of the car shall determine the minimum carload weight. The carrier in question had over 1,200 cars of 40,000 pounds capacity, over 663 cars of 50,000 pounds capacity, and over 125 cars of 28,000 pounds capacity, and its plea of justification would enable

it to demand and collect for 60,000 pounds of wheat intended for export, although the capacities of the cars furnished for such traffic was only 50,000 pounds, or 40,000 pounds, or 28,000 pounds.

The Commission condemned the tariff provision prescribing the minimum weight above referred to on all shipments of wheat for export between the points named as unreasonable and unlawful, in view of the carrier's complement of equipment, and ordered reparation for the overcharge above 50,000 pounds on the shipment under consideration. (8)

Carriers establishing carload rates on commodities are permitted and sometimes required to establish different minimum carload weights for the numerous varieties of articles, by reason of their nature, weight and bulk. No general rule can be laid down that will fix a standard of measurement in all cases. The mandate of the law is that such regulation shall be reasonable and not unjustly discriminatory or unduly prejudicial. These restrictions are to be measured by the commodity's necessities to which they are applied. A minimum weight fairly applicable to one commodity might not be reasonable if applied to another commodity. The minimum weight regulation is for the purpose of insuring to the carrier a fair load for its cars and to advise the shipper of the amount he is required to load in order to get the carload rate and to escape paying the less-than-carload rate or charges on freight the weight of which does not come up to the minimum. Actual weighing of the article or articles making up a carload is the only way by which their total weight can be ascertained to a certainty, but this practice is not always convenient, practicable or even advisable. Where a carload minimum weight is established for a given commodity,

careful consideration should be given to the character of the commodity as well as the ease or difficulty attendant upon estimating the amount required to make up the minimum weight. Most shippers do not have their own scales or the means of ascertaining the actual weight put into a car, and of necessity are required to depend somewhat upon an estimate of the amount they load and whether it equals the minimum weight or exceeds the maximum. Where the commodity is not susceptible of a reasonably accurate estimated weight there should be sufficient margin between the minimum and the maximum weights to allow for reasonable variation between the estimated and the actual weights.

In 1897 the rate on paving blocks from Lithonia to Chicago via the Georgia Railroad and its connections was \$3.82½ per ton of 2,000 pounds, in carloads, subject to a minimum carload weight of 40,000 pounds. This rate was subsequently reduced to \$3.23 per ton of 2,000 pounds, with the understanding that cars would be loaded to their marked capacities, but that regulation did not appear in the tariff which reduced the rate. Later this rate was further reduced to \$3.10 per ton of 2,000 pounds, in order to enable the producers in the Lithonia and Stone Mountain sections to compete in Chicago with the quarries of Wisconsin and South Dakota, and the regulation was expressed in the tariff fixing such lower rate that the minimum weight of the carload would be the marked capacity of the car. The lines north of the Ohio River considered this rate entirely too low to retain the 40,000-pound minimum, and as a very material portion of the reduction was borne by the lines north of the Ohio River, they insisted upon the marked capacity minimum. At that time, as well as at present, the defendants were carry-

ing paving blocks from Lithonia to Cincinnati at a rate of \$2.43 per ton, subject to a 40,000-pound minimum weight, but that rate produced a greater revenue per ton per mile than the \$3.10-rate from Lithonia to Chicago. On November 30, 1907, the carriers cancelled this marked-capacity-regulation, not because it was deemed unreasonable, but because they hoped thereby to satisfy the shippers, and published *in lieu* thereof a carload minimum weight of 40,000 pounds. March 20, 1908, the carriers cancelled the rate of \$3.10 per ton and established in its stead a rate of \$3.83 per ton of 2,000 pounds in carloads, minimum weight 40,000 pounds.

The weight of a cubic foot of paving blocks (stone) is 165 to 170 pounds. When ordering cars, the shippers made no demand for cars of any specific capacities, although the carriers had cars subject to demand whose capacities ranged from 40,000 to 100,000 pounds. The shippers admitted that all cars received and loaded could have been loaded to their marked capacities. Based upon the weight per cubic foot of paving blocks, each car could have been loaded to about double its marked capacity.

The Commission held the making of the minimum carload weight the marked capacity of the car was neither unjust nor unreasonable, where the nature of the traffic would permit and the circumstances under which it is transported justify such a regulation. (9)

Compared with these rulings, the declaration of the Commission in the Western Classification case (10) is significant, although the holding in the latter case had reference to a general basis of carload minimum weights to govern shipments throughout a very large portion of the country. Here the Commission declared that the carriers should take into consideration both the physical

minimum and the commercial minimum in deciding upon a classification minimum to govern carload shipments throughout the country and provide themselves with cars of corresponding sizes, but what these shall be must be determined in the light of all the facts applicable to each individual case. The physical minimum is that minimum which represents the weight or bulk quantities which can be loaded into a car from the point of view of space, determined by dividing the cubical contents of the car by the cubical contents of one of the packages, multiplied by the weight of the package, possibly with some consideration of the dimensions of the package, thereby ascertaining the theoretical number of packages capable of being loaded into the car. The commercial minimum is that minimum which represents the unit of purchase and sale of the commodity in question as established by custom and the conditions existing in the trade and in the territory in which it governs at the time the minimum was established. Thus, the physical minimum would consider only physical loading capacity of the car, while the commercial minimum would consider in addition trade requirements, conditions of manufacture, distribution and consumption.

- (1) *In re Suspension and Investigation of Western Classification No. 51*, 25 I. C. C. Rep. 442, 482, 483.
- (2) *N. W. Woodenware Co. vs. C. M. & P. S. Ry. Co.*, 28 I. C. C. Rep. 237, 242.
- (3) *Minimum Weights on Corn in Southwest*, 26 I. C. C. Rep. 197, 202.
- (4) *Minimum Weights on Corn in Southwest*, 26 I. C. C. Rep. 197, 202.
- (5) *Struck Co. vs. L. & N. R. R. Co.*, 26 I. C. C. Rep. 469, 471.
- (6) *Weimer & Rich vs. C. & N. W. Ry Co. et al.*, 12 I. C. C. Rep. 462, 465.
- (7) *Ozark Fruit Growers' Assn. vs. St. L. & S. F. R. R. Co. et al.*, 16 I. C. C. Rep. 106, 109.

- (8) Rosenbaum Grain Co. vs. M. K. & T. Ry. Co. et al., 15 I. C. C. Rep. 499.
- (9) Georgia Rough & Cut Stone Co. vs. Ga. R. R. Co. et al., 13 I. C. C. Rep. 401, 402.
- (10) In re Suspension and Investigation of Western Classification No. 51, 25 I. C. C. Rep. 442, 482, 483.

Note.—The Commission also held in the Western Classification case that mere physical capacity cannot in fairness be permitted to govern universally in the shipment of carload minima.

See also—

- Durham Coal & Iron Co. vs. Cent. of Ga. R. R. Co., 34 I. C. C. Rep. 10, 12.
- Boise Lumber Co. Ltd. vs. P. & I. N. Ry Co., 33 I. C. C. Rep. 109, 111.
- Kibbe vs. A. & S. Ry. Co., 33 I. C. C. Rep. 415, 416.
- Funck Lumber Co. vs. B. & O. S. W. R. R. Co., 33 I. C. C. Rep. 511.
- Menasha Wooden Ware Co. vs. C. & N. W. Ry. Co., 33 I. C. C. Rep. 563, 565.
- Alexandria Barrel Co. vs. C. R. I. & P. Ry. Co., 27 I. C. C. Rep. 196.
- Western Fruit Jobbers' Assn. vs. C. R. I. & P. Ry. Co., 27 I. C. C. Rep. 417, 423.
- Rates on Asphalt and Asphaltum, 26 I. C. C. Rep. 614, 616.
- In re Wool, Hides and Pelts, 25 I. C. C. Rep. 185, 187, 188, 189.
- Lindsay Bros. vs. P. M. R. R. Co., 25 I. C. C. Rep. 368, 369.
- Riverside Mills vs. G. R. R. Co., 25 I. C. C. Rep. 434, 435.
- Kibbe vs. St. L. B. & M. Ry. Co., 25 I. C. C. Rep. 661.
- Arlington Heights Fruit Exchange vs. S. P. Co., 24 I. C. C. Rep. 671, 672.
- In re Rates for Transportation of Potatoes, 23 I. C. C. Rep. 69.
- Du Pre Co. vs. B. R. & P. Ry. Co., 23 I. C. C. Rep. 226, 228.
- Baxter & Co. vs. G. S. & F. Ry. Co., 21 I. C. C. Rep. 647, 649.
- Pease Bros. Furn. Co. vs. S. P. L. A. & S. L. R. R. Co., 17 I. C. C. Rep. 223, 224.
- Tayntor Granite Co. vs. Montpelier & Wells River R. R. Co., 14 I. C. C. Rep. 136, 137.
- Jones vs. M. & W. R. R. R., 14 I. C. C. Rep. 139, 140.
- Jones vs. Cent. Vt. Ry. Co., 14 I. C. C. Rep. 141, 142, 143.

Jones vs. M. & W. R. R. R., 14 I. C. C. Rep. 144, 145.

Lazarri & Co. vs. M. & W. R. R. R. Co., 14 I. C. C. Rep. 146.

Kansas City Hay Dealers' Assn. vs. M. P. Ry., 14 I. C. C. Rep. 597, 603.

Reed vs. C. M. & St. P. Ry. Co., 14 I. C. C. Rep. 616, 618.

Compare—

Partridge & Sons Co. vs. P. R. R. Co., 26 I. C. C. Rep. 484.

R. R. Com. of Calif. vs. A. G. S. R. R. Co., 32 I. C. C. Rep. 17.

California Fruit Growers' Assn. vs. A. G. S. R. R. Co., 32 I. C. C. Rep. 51.

CHAPTER V.

WEIGHTS AND WEIGHING (Continued).

- § 1. Light Loading of New Cars on Initial Movement.
- § 2. Effect of Master Car Builders' Association Rules and Minimum Weights Established Thereto.
 - (1) Hypothesis.
 - (2) M. C. B. Rules.
 - (3) Trans-Continental Minimum Weights.
- § 3. Minimum Weights for Refrigerator Cars, With and Without Refrigeration Service.
- § 4. Actual Weight to Govern in Absence of Legally Published Minimum Weights.
- § 5. Effect of Connection Line Minimum Weights for Carload Shipments on Shipments Under "Any-Quantity" Rate of Initial Carrier.
- § 6. Minimum Weights on Mixed Carloads.
- § 7. Less-Than-Carload Minimum Weights.
- § 8. Established Weights.
- § 9. Discrepancies in Origin and Destination Weights.
 - (1) "Tolerance" in Weight.
- § 10. Bill of Lading Weight; When Weight is Ascertained at Origin Point; Conclusive.
- § 11. Billing at Fictitious Weights Instead of Actual Scale Weights.
- § 12. Reweighing.
- § 13. Penalties for Overloading Cars.
- § 14. Billing Cars at Marked Capacity in Switching Service Not Unreasonable.
- § 15. Carriers' Loading Restrictions Cause Load to Weigh Less Than Minimum.
- § 16. Unreasonable to Restrict the Weighing of a Commodity to Point of Origin.
- § 17. Weight of Shipments Packed in Ice.
- § 18. Application of Minimum Weight to Overflow Shipment.
- § 19. Tank Cars.

CHAPTER V.

WEIGHTS AND WEIGHING (Continued).

§ 1. Light Loading of New Cars on Initial Movement.

Carriers' mechanical departments have rules against loading to its full capacity a new car on its initial trip. This rule is understood generally to provide that such car shall not on its trip be loaded to more than seventy-five per cent of its capacity. The Commission was requested to pass upon the question of conflict between the tariff minimum carload weights and the mechanical department's rule.

All new cars are now of much greater capacity than those of a few years ago, and carload minimum weights have also been increased. The number of commodities that are shipped in closed cars and that ordinarily are loaded to the full capacity of the car are few comparatively. Except in times of actual car shortage there would seem to be but little difficulty in selecting for such new cars, loading that would bring no conflict between the tariff and the mechanical department's rule. The tariff rule is the one which the carrier is by law obligated to observe and maintain. It is not possible to authorize setting aside the tariff requirement without creating or making possible discriminations. There is no objection to incorporating in the tariff a rule that the minimum weight applicable to a new car on its first loading shall be a certain percentage of its capacity or of the minimum weight fixed

in the tariff. The Commission adheres to the view that the rule governing minimum weights shall be contained in a lawful tariff and that it must be applied and observed in accordance with the terms of the tariff.

I. C. C. Tariff Circular 18-A, Rule No. 66-(b), adopted May 12, 1908.

§ 2. Effect of Master Car Builders' Association Rules, and Minimum Weights Established Thereto.

(1) Hypothesis. A shipper forwarded an aggregate shipment of 1,560,340 pounds of steel rails from Johnstown, Pa., to Seattle, Wash., with prepayment of freight charges to the Baltimore & Ohio Railroad Company, the initial carrier, on the basis of \$3.00 per gross ton, Johnstown, Pa., to Kankakee, Ill., and \$10.00 per gross tone from Kankakee, Ill., to Seattle, Wash., making a total through charge of \$13.00 per gross ton, with aggregate charges on the entire shipment amounting to \$9,746.52.

These rails were 60 feet in length, and consequently it was necessary to load them on twin cars, the entire consignment requiring the use of twenty pairs of cars so loaded.

On arrival of the shipments at destination additional charges were demanded and collected by the Great Northern Railway Company to the amount of \$2,779.40. The discrepancy between this sum and the amount of reparation claimed appeared to be due to the fact that these additional charges were collected upon the difference between 1,910,000 pounds and 1,287,420 pounds, the actual weight of the lading, or 622,580 pounds, at \$10.00 per gross ton, from Kankakee, Ill., to Seattle, Wash.; whereas, the alleged maximum weight of the lading permissible was 1,365,000 pounds, making the difference between this weight and the aggregate weight charged for by the Great

Northern Railway 545,000 pounds, upon which, at the rate of \$10.00 per gross ton, the charges would amount to \$2,433.04. However, the actual weight of the shipments, taken from the bills of lading issued by the Baltimore & Ohio Railroad Company covering the shipment appeared to aggregate 1,560,340 pounds.

The tariff under which these shipments moved from Johnstown to Kankakee was B. & O. R. R. Joint Freight Tariff I. C. C. No. 5532, providing a minimum weight of 20 gross tons to the car, unless the capacity of the car was less, in which latter case the marked capacity of the car would be the minimum carload weight, but in no case should the minimum weight be less than 15 gross tons.

(2) **M. C. B. Rules.** Under the rules of the Master Car Builders' Association, of which the Baltimore & Ohio Railroad Company and the Great Northern Railway Company were members at the time of the movement of the shipment in question, shippers were not permitted to load 60-foot rails on twin cars to a greater weight than 75 per cent of the marked capacity of the cars. The aggregate marked capacity of the forty cars used in the transportation of these shipments was 2,100,000 pounds. The maximum permitted under the rules referred to would therefore be 1,575,000 pounds.

(3) **Transcontinental Minimum Weights.** The exaction of the additional charges at Seattle of \$2,779.40 by the Great Northern Railway Company was predicated upon the rule established in Supplement No. 22 to Transcontinental Freight Bureau, Westbound Tariff I. C. C. No. 376, which provided a carload minimum weight of 60,000 pounds on steel rails, unless the marked capacity of the car was less, in which latter case the minimum carload weight would be the marked capacity of the car from

Chicago, Ill., and common points, including Kankakee, Ill., to Seattle, Wash.

It will be seen that the rule of the Baltimore & Ohio Railroad Company governing the loading of traffic of this character was made with regard to the rule or regulation promulgated by the Master Car Builders' Association, whereas the rule of the Great Northern Railway Company prescribed an arbitrary minimum weight without regard to the requirements of the Master Car Builders' Association rule.

The Commission held that the rule or regulation of the Great Northern Railway Company in force at the time these shipments moved, and which was applied thereto, whereby freight charges were assessable upon a higher minimum loading requirement than the practice of the carriers applying the Master Car Builders' Association rule would permit, was unreasonable and unjust, and that the exaction of the said sum of \$2,433.04 was unreasonable and unjust.

It will be noted in this case, however, that the conflict was between the provisions of lawfully established tariffs, and not between a lawfully published tariff and a rule of the Master Car Builders' Association not published in tariff form.

Cambria Steel Co. vs. G. N. Ry. Co., 12 I. C. C. Rep. 466.

See also report of Interstate Commerce Commission in the Western Trunk Lines case—

Western Trunk Line Rules, 34 I. C. C. Rep. 554, 571.

In this case Rules 1510, 1520, 1530, 1540 and 1550 were rules of various carriers prescribing various minimum weights to be charged on shipments loaded in new or rebuilt equipment. It was proposed to consolidate them into Rule 1160 in Circular 1-K, providing that freight

loaded in new or rebuilt cars which can not be safely loaded to the minimum weight provided in the tariffs or classifications, when making initial trips, will be subject to the minimum weights published in tariffs or classifications governing but not to exceed 40,000 pounds. The Commission said:

"The proposed rule provides additionally that if by reason of the character, construction or age of equipment furnished the minimum carload weight as specified in tariffs or classifications can not be loaded, the minimum weight to be charged for on shipments loaded thereon shall not exceed the safe loading capacity as determined by the operating, transportation or inspection department. This provision merely directs attention to the rules of the mechanical or operating departments.

"While the rule has a material bearing on the charges to be assessed against shippers, the principal change effected is the establishment of a uniform minimum, in excess of which charges are not to be assessed. We approve the proposed rule."

§ 3. Minimum Weights for Refrigerator Cars, with and Without Refrigeration Service.

In a case where the carriers' charges for the transportation of peaches from Macon and Atlanta, Ga., to Philadelphia, Pa., New York, N. Y., Washington, D. C., and Baltimore, Md., including both the charge for carriage and the charge for refrigeration, having been complained of by the shippers as unreasonable and unjust, the Commission held that the rates per 100 pounds for the transportation of peaches, other than refrigeration, from Macon and Atlanta, to-wit: 81 cents to Philadelphia, Pa., and New York, N. Y., and 78 cents to Baltimore, Md., and Washington, D. C., and their refrigeration charge of 12.5 cents

per crate of 42 pounds, minimum carload 550 crates, between such points, were unreasonable and unjust; and that the carriers' practices in using one minimum carload requirement for transportation service other than refrigeration, and a different minimum carload for refrigeration service was also unreasonable and unjust. The Commission directed that a carload minimum weight of 20,000 pounds for 36-foot cars and 22,500 pounds for 40-foot cars, be established for peaches, and fixed the refrigeration charge at not to exceed 11 cents per crate of 42 pounds and applied on a carload minimum basis of 476 crates for 36-foot cars and 535 crates for 40-foot cars.

Waxelbaum & Co. vs. A. C. L. R. Co., 12 I. C. C. Rep. 178, 182.

While there might have been some reason before the passage of the amendment to the Act to Regulate Commerce, of June 29, 1906, for maintaining different minimum weights for the computation of transportation and for refrigeration charges, upon the theory that the transportation and refrigeration charges were made by different companies, that has not been the case since the amendment, as the carrier furnishes both services. The Commission has held that it cannot imagine a case where the maintenance of different minimum weights for transportation and for refrigeration service accomplishes any good end, and such practices in fact only result in confusion to both shipper and carrier in making out the expense bills.

Ozark Fruit Growers' Assn. vs. St. L. & S. F. R. R. Co. et al., 16 I. C. C. Rep. 106, 108.

See also—

Western Fruit Jobbers' Assn. vs. C. R. I. & P. Ry. Co., 27 I. C. C. Rep. 417, 423; advancing minimum because of empty return haul of refrigerator car.

For discussion of the separation of transportation and refrigeration charges, see:

Arlington Heights Fruit Exchange vs. S. P. Co., 20 I. C. C. Rep. 106.

R. R. Com. of State of California vs. A. G. S. R. R. Co. et al., 32 I. C. C. Rep. 17, 18, 19, 20, 27.

California Fruit Growers' Assn. et al. vs. A. G. S. R. R. Co. et al., 32 I. C. C. Rep. 51.

Compare:

G. W. Hume Co. et al. vs. So. Pac. Co. et al., 33 I. C. C. Rep. 126, 127; where transportation minimum was 30,000 pounds and refrigeration minimum was 50,000 pounds, and which the Commission did not find to be unreasonable.

Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. Rep. 349, 350.

§ 4. Actual Weight to Govern in Absence of Legally Published Minimum Weights.

In a case where 400 sacks of Portland cement, weighing in the aggregate 38,000 pounds, were shipped over the lines of the Missouri, Kansas & Texas Railroad and its connections, from Chanute, Kan., to Denison, Ia., there was an absence of a joint through rate, and a combination of rates of 10 cents per hundred pounds to Council Bluffs and a local rate of 4.9 cents per hundred pounds beyond was applied. Although the 10-cent rate was published as a carload rate, the tariff in which it was carried omitted to provide a minimum carload weight for a movement of this commodity between those points under that rate. This omission occurred through the fact that the tariff in question named numerous destination points, to which index numbers were assigned from "one" consecutively to "2602," prescribed a minimum weight of 30,000 pounds for all stations under index numbers 1 to 75, inclusive, a minimum weight of 40,000 pounds to station numbers 76 to

115, inclusive, and so, station No. 700 coming within a rule fixing a 40,000-pound minimum, while station No. 701 took a minimum of 30,000 pounds. Council Bluffs was added to the list of destination points in a supplement, being named as station No. 700-A; but neither in the original tariff nor in the supplement was any minimum weight for carloads assigned to 700-A, thus leaving the 10-cent carload rate to that point without any legally established minimum. When the tariff subsequently was superseded the carriers republished the 10-cent rate between Chanute and Council Bluffs and fixed the carload minimum at 30,000 pounds, that being the rate and minimum previously in effect to Omaha.

In another joint tariff published by the delivering carrier, the Rock Island, and effectively only a few days before the date of this movement, a carload rate of 10 cents was named on this commodity from Chanute to Council Bluffs with a minimum weight of 40,000 pounds. This rate conflicted with the rate previously established by the initial line, and therefore was not a legal rate. (1) But apparently it was applied on the shipment in question, for the freight charges thereon were based on a minimum weight of 40,000 pounds, although, as heretofore stated, the weight of the shipment was but 38,000 pounds.

- (1) *New Albany Box & Basket Co. vs. I. C. R. R. Co.*, 16 I. C. C. Rep. 315.

The absence of a legally established minimum carload weight suggested the inquiry as to the quantity upon which a shipper might claim the benefit of the carload rate in preference to the less-than-carload rate. And for the purpose of laying down a general rule the Interstate Commerce Commission held that when a car is demanded and loaded by the shipper and is tendered and otherwise

handled as a carload, and no minimum carload weight is legally provided, the carload rate, if it makes less than the less-than-carload charge, must be applied on the actual weight. It lies in the power of a carrier to protect its revenues by fixing, in the manner provided by law, minimum weights to be applicable under its published carload rates. If it fails to take this precaution it imposes no hardship upon it to give a shipper the benefit of the carload rate on the actual weight of the shipment tendered as a carload, whether it be more or less than an ordinary carload quantity. This ruling, the Commission said it was to be understood, is applicable to all cases of this kind arising in the future.

Sunderland Bros. Co. vs. M. K. & T. Ry. Co. et al., 18 I. C. C. Rep. 425.

§ 5. Effect of Connecting Line Minimum Weights for Carload Shipments on Shipments Under "Any-Quantity" Rate of Initial Carrier.

A complaint for reparation was filed with the Interstate Commerce Commission under the following facts: August 10, 1907, one J. G. Falls, engaged in the business of buying and shipping cotton and cotton linters at Memphis, Tenn., tendered to the St. L. & S. F. Railroad at Malden, Mo., fifty bales of uncompressed cotton linters of the aggregate weight of 22,471 pounds, for transportation to Minneapolis, Minn. The bales were delivered by an agent of the shipper at the cotton loading station of the Frisco Railroad at Malden, Mo. There was no testimony on behalf of either party as to what was said by the shipper, through his agent at Malden, when the shipment was tendered to the carrier. It appeared that the shipper by letter directed his agents to ask for a car large enough to take the entire 50 bales, but whether such a car was in fact

demanding did not appear by competent evidence in the case. The Commission assumed, however, that such a request was made, and that the Frisco Railroad agent at Malden, Mo., replied by saying that he would furnish the largest available car for the shipment.

As a matter of fact two cars were used, one a 40-foot car and the other a 36-foot car. Thirty bales were loaded into the 40-foot car and the remaining twenty bales into the 36-foot car. The shipper claimed that with proper skill and care in loading, fifty bales of uncompressed cotton linters could be loaded into a 40-foot car of standard dimensions. The carrier denied this. Bales of cotton and cotton linters, as they ordinarily come uncompressed from the gin, vary much in size, and it definitely appeared that the thirty bales loaded into the 40-foot car filled it to visible capacity. Nor did the Frisco Railroad, at the time the shipment was tendered by the shipper, have on hand at Malden, Mo., any larger car than the 40-foot car actually supplied. The bill of lading was at once delivered to the shipper's agent, and the carrier gave him immediate notice that the shipment had been loaded into two cars, but the agent took no action of any kind.

The shipment went forward in two cars, and reached its destination in that form. There is no joint through rate for the transportation of cotton linters from Malden, Mo., to Minneapolis, Minn., and the charges were therefore assessed in combination of local rates on St. Louis. The local rate from Malden, Mo., to St. Louis, Mo., was twenty-five cents per hundred pounds, while the rate from St. Louis, Mo., to Minneapolis, Minn., a joint through rate between the points via the Burlington and Rock Island lines, was twenty-six cents per hundred pounds, making a combination of fifty-one cents per hundred pounds for the through movement from Malden, Mo., to

Minneapolis, Minn. The 25-cent rate of the Frisco Railroad from Malden, Mo., to St. Louis, Mo., was an "any-quantity" rate; i. e., without any established carload quantity. The joint rate of the Burlington and Rock Island lines from St. Louis, Mo., to Minneapolis, Minn., was a carload rate based on a minimum of 24,000 pounds. The shipment was handed over to the Burlington at St. Louis in two cars, one loaded to its visible capacity and the other partially loaded—the twenty bales in the second car aggregating only 8,988 pounds in weight. The Burlington being without special instructions or any notice of the wishes of the consignor or of his plans with respect to the final disposition of the shipment, accepted it in the form in which it was tendered and hauled the two cars to Burlington, Ia., where they were delivered to the Rock Island Railroad. Upon the arrival of the two cars at Minneapolis, Minn., the Rock Island assessed the charges from St. Louis on the 40-foot car at the carload rate of twenty-six cents, based on a minimum of 24,000 pounds, as provided in the published tariffs. And under tariff authority to that effect, it assessed the charges from St. Louis on the second car at the rate of twenty-six cents per hundred pounds for the 8,988 pounds which that car contained.

Had the Frisco Railroad supplied one car large enough to have taken the entire fifty bales they would have gone through from St. Louis to destination at the published carload rate on the one car, the total weight of the shipment being within the carload minimum weight provided in the tariffs of the connecting lines, and thus the shipper would have escaped the charges on the second car.

Aside from the natural desire of a carrier to comply with the reasonable requests of its shippers, it would doubtless cost it less to use one large car when available instead of two smaller cars. The Frisco must therefore

be acquitted of any intentional disregard of the shipper's request. Assuming that it was aware of the condition of the tariffs of its connections at St. Louis and understood that one car had been requested in order that the shipper's consignment might come within the terms of those tariffs, the question before the Commission was whether the Frisco was bound as a matter of law to furnish one car to the shipper sufficiently large to hold the fifty bales, and whether, having been unable to do so, would be responsible to the shipper in the amount of the additional charges the shipper was compelled to pay on the second car. It is probably true under an any-quantity rate that if the shipper and the Frisco agent had reached an agreement before the shipment was tendered, under which the Frisco agent undertook to furnish a car large enough to take the fifty bales, the shipper could have held the Frisco to the fulfillment of the agreement notwithstanding. But instead of an agreement, it was a mere request, with which the Frisco was apparently unable to comply. Does such a request impose any duty upon the carrier under such circumstances, even if it be assumed that it has knowledge of the fact that its compliance will save the shipper additional freight charges on connecting lines? Stating the question in another form, has the shipper under such circumstances the right to demand of a carrier a car large enough to take the shipment offered? The Commission, passing upon this question, said:

"We think not. In such matters the carrier's own published tariffs would seem to be the measure of its obligations to shippers. It can not be controlled in its duties to shippers by the terms of the separate tariffs of its connections. One of the benefits, if not one of the objects, of an 'any quantity rate' is that it leaves the carrier with some freedom in the use of its equipment. Such a tariff

gives the shipper no right to demand a car of a given size. Even if a larger car had been available the carrier was not bound to give it to this complainant for a shipment carrying an "any quantity rate." It might very well be that the larger car would be required by another shipper for the movement of another commodity that could be carried economically only under a carload rate based on a minimum weight. In such case the carrier under its tariffs would seem to be under the necessity of assigning the car to that shipper. While a carrier in accepting a shipment ought to consider the convenience and interests of the shipper, nevertheless, as a matter of law, it is under an obligation only of satisfying the requirements of its own tariffs. It can not be called upon to do for shippers only what it offers to do in its own tariffs or in any joint tariffs to which it is properly named as a party. It can not be compelled to meet the requirements of the separate tariffs of its connections.

"The obligations of connecting lines with respect to the use of equipment under a joint through rate to which they are parties have been considered by the Commission in *Pacific Purchasing Company vs. C. & N. W. Ry. Co.*, 12 I. C. C. R. 549, and in other cases. We are here considering only the obligation of the initial carrier in a through movement on local rates, but under a through bill of lading. The question may be of more importance than we can now anticipate. We therefore confine the ruling to the particular case in hand, and base it upon the special facts disclosed by the record. All we intend now to hold is that under the circumstances shown of record neither the Frisco nor its connecting lines in handling this shipment were guilty of any unreasonable departure from the ordinary practice of carriers in such matters."

J. G. Falls & Co. vs. C. R. I. & P. Ry. Co. et al., 15 I. C. C. Rep. 269, 270.

§ 6. Minimum Weights on Mixed Carloads.

The effect of a rule permitting a mixture of several different articles to constitute a shipment under a carload rate is in reality giving to the shipper a carload rating and minimum weight on less-than-carload shipments.

The question of proper weights applicable to mixed carloads has long been a vexatious one, and in *Ponchatoula Farmers' Association vs. Illinois Central Railroad Company*, 19 I. C. C. R. 513, 519, the Commission passed upon the following rule of the defendant carrier:

"Rule No. 4.—When two or more articles are shipped in a mixed carload by one shipper from one station on one day to one consignee and one destination, the carload rate on each article shall be applied, subject to a minimum weight of 20,000 pounds. When the aggregate weight of a mixed carload shipment does not amount to 20,000 pounds, add to the weight of the highest rated article in the shipment sufficient to make minimum weight of 20,000 pounds. This rule will be used only when its application will make a less total charge than would the application of less-than-carload rates at actual weight."

The Commission held:

"Complainant attacks the reasonableness of the requirement that the deficit in minimum shall be added to the weight of the highest rated article in the shipment. Under all the circumstances, we are of the opinion, and so hold, that said rule is unreasonable in the requirement that 'when the aggregate weight of a mixed carload shipment does not amount to 20,000 pounds, add to the weight of the highest rated article in the shipment sufficient to make a minimum weight of 20,000 pounds,' and that in lieu of said requirement the rule should for the future provide that when the aggregate weight of a mixed carload shipment does not amount to 20,000 pounds, add to the weight

of the heaviest loaded article in the shipment sufficient to make minimum weight of 20,000 pounds, except that when the shipment consists of two or more articles of equal weight the weight sufficient to make the minimum weight of 20,000 pounds shall be added to the weight of the lowest rated article."

Ponchatoula Farmers' Assn. vs. I. C. R. R. Co., 19 I. C. C. Rep. 513, 519.

See also—

Western Rate Advance Case, 37 I. C. C. Rep. 114.

Western Rate Advance Case, 35 I. C. C. Rep. 497.

Louden Machinery Co. vs. A. T. & S. F. Ry. Co., 34 I. C. C. Rep. 383.

Western Trunk Lines Rules, 34 I. C. C. Rep. 554, 561, 567, 567, 570, 579.

Mixed Car Dealers' Assn. vs. D. L. & W. R. R. Co., 33 I. C. C. Rep. 133, 139.

Funk Lumber Co. vs. B. & O. S. W. R. R. Co., 33 I. C. C. Rep. 511.

Lee vs. St. L. S. W. Ry. Co., 29 I. C. C. Rep. 101, 102, 103.

Hewitt & Connor vs. C. & N. W. Ry. Co., 16 I. C. C. Rep. 431.

§ 7. Less-Than-Carload Minimum Weights.

The various freight classifications have incorporated therein a rule to the effect that one hundred (100) pounds shall be the minimum weight upon which charges shall be assessed for a single package or a number of small packages constituting one shipment. This is justified by the fact that on less-than-carload lots of freight, or small shipments, the same amount of clerical work is required in the execution of bills of lading, receipts, expense bills, the duplication and copying of the same, rate calculations, transfer to connecting lines, notice to consignee, receipt of freight, and divisions among the carriers conducting the transportation, whether it be a small shipment or one of several hundred pounds, the only difference being in the

manual labor necessary in loading, transferring and unloading. By way of illustration, a shipment from Chicago by connecting lines to Jacksonville, Fla., would receive attention from and would come under the jurisdiction of perhaps fifty different persons; and in case the package would become mislaid or stolen the tracing thereof would require ordinarily no less than twenty-five written communications. It appears also that small packages are much more liable to be lost, misplaced or stolen than larger ones, and occasion more trouble in tracing; whereas the cost of clerical labor is as much for small as for large packages or shipments, and there is little, if any, difference in the cost of other labor.

Wrigley vs. C. C. C. & St. L. R. Co. et al., 10 I. C. C. R. 412.

In the case of A. A. Bennett vs. Minneapolis, St. Paul & Sault Ste. Marie Railway Company, 15 I. C. C. R. 301, 303, the Commission passed upon and condemned a practice under Western Classification of charging a minimum weight on less-than-carload shipments in excess of their actual weight. Bennett shipped via the defendant carrier's line from St. Paul, Minn., to Douglas, N. Dak., 1 package of plate glass, 8 feet square, the actual weight of which was 900 pounds, and upon which, under its tariffs the defendant exacted the first class rate of \$1.11 per 100 pounds on a minimum weight of 5,000 pounds, in accordance with item 17, page 54, of Western Classification No. 42, effective April, 1907, as follows:

"In packages exceeding 7.5 feet high or 15 feet long, minimum charge 5,000 pounds."

The issues in the case were joined by the charge of Bennett that the charges collected were unreasonable and unjust in that they exceeded the first class rate on the actual weight, and the denial of the carrier.

The glass was covered with excelsior and packed in a hard maple box, which was nailed to the end, side, and bottom of the box car into which it was loaded together with other goods. The cost of the glass was \$46, f. o. b. St. Paul, to which point it had doubtless been shipped from Pittsburgh or from some Atlantic or Gulf port. The freight charges exacted from Bennett for transporting it from St. Paul to Douglas, a distance of 587 miles, exceeded by \$9.50 the cost of the glass at St. Paul.

The Commission, in disposing of this case, said:

"The apparently controlling factor in determining the reasonableness of the regulation that a package of plate glass exceeding 7.5 feet in height shall be subject to a minimum weight of 5,000 pounds, is whether or not it can reasonably be loaded into a box car. This glass was loaded into a box car and the fact that it was a furniture car does not, in our view, materially affect the situation. It does not appear that ordinarily there would be difficulty about loading it into a box car. The change in the size of the carrier's equipment should naturally be followed by a change in rules which were made because of the smaller equipment in use at the time such rules were established. We are not called upon in this case to determine as to the reasonableness of a minimum weight of 5,000 pounds on a single package of plate glass necessarily loaded on a flat or gondola car, but we are of the opinion that a package of plate glass capable of being loaded into a box car should not have assessed against it an estimated weight, but should be transported at actual weight, subject of course, to the carrier's rule for minimum weight for packages weighing less than 100 pounds. We consider that a minimum weight of 5,000 pounds on a package of plate glass loaded into a box car is unjust and unreasonable and complainant is entitled to the reparation claimed."

§ 8. Estimated Weights.

The practice of employing an estimated or arbitrary weight per package, or other unit of quantity, as a basis for computing the transportation charge, is fraught with possibilities of injury to the shipper—discrimination between shippers. It is a practice that under some peculiar circumstances is not only justifiable but necessary in order to afford the carrier a reasonable revenue basis. This is generally occasioned by extreme size or bulk of an article or package compared with its unusually light density.

Early in its administrative history, the Interstate Commerce Commission declared the practice of billing shipments of proper estimated weights per package, or other physical unit of quantity, in cases where it was impossible or inconvenient to ascertain actual weights, was not in contravention of the Act to Regulate Commerce, provided the carrier promptly adjusted the charges upon the basis of actual weights furnished the consignee.

While the rule is fundamentally recognized by the Commission that the shipper should be required to pay on the actual weight of his shipment—and in law the rule is also sanctioned—the Commission has frequently approved proper estimated weights. But such estimated weights should bear some close relation to the actual weight. So, in instances where it is difficult to obtain actual weight of articles shipped, estimated weights per some fixed unit or standard may be employed in arriving at proper transportation charges, such standard weights per unit established by the carriers as a basis for charges in such instances being fair, closely related to the actual weight and the result of careful investigation. The Commission recognizes the fact, under certain conditions, the establishment of estimated weights is of material advantage to both the

shipper and carrier in expediting movements, and where such estimated weights are just and reasonable they are unobjectionable. Estimated weights must be published in tariffs the same as any other condition affecting the ultimate charge.

New Orleans Shippers' Assn. vs. I. C. R. R. Co., 34 I. C. C. Rep. 32, 36.

Western Trunk Line Rules, 34 I. C. C. Rep. 554, 572.

Boise Lumber Co. vs. P. & I. N. Ry. Co., 33 I. C. C. Rep. 109, 116.

National Assn. of Ice Cream Mfgs. vs. Adams Ex. Co., 33 I. C. C. Rep. 411, 412.

R. R. Com. of California vs. A. G. S. R. R. Co., 32 I. C. C. Rep. 17, 31, 35.

National Casket Co. vs. S. Ry. Co., 31 I. C. C. Rep. 678, 684.

Weighing of Freight by Carriers, 20 I. C. C. Rep. 7, 30.

Crutchfield, Woolfolk & Clore vs. F. E. C. Ry. Co., 28 I. C. C. Rep. 274, 278.

Molasses Rates from Mobile, 28 I. C. C. Rep. 666.

Minneapolis Brewing Co. vs. A. T. & S. F. Ry. Co., 28 I. C. C. Rep. 688, 695.

In re Suspension of Western Classifications No. 51, 25 I. C. C. Rep. 442, 532.

Standard Oil Co. vs. I. T. R. R. Co., 23 I. C. C. Rep. 369.

Simpson Fruit Co. vs. Wells, Fargo & Co., 23 I. C. C. Rep. 412.

National League of Com. Merchants of U. S. vs. A. C. L. R. R. Co., 20 I. C. C. Rep. 132, 135.

Noble vs. S. & St. L. S. W. R. R. Co., 20 I. C. C. Rep. 62.

Davies vs. I. C. R. R. Co., 16 I. C. C. Rep. 376, 380.

Ozark Fruit Growers' Assn. vs. St. L. & S. F. R. R. Co., 16 I. C. C. Rep. 134, 136.

Hydraulic Press Brick Co. vs. St. L. & S. F. R. R. Co., 13 I. C. C. Rep. 342, 345.

Broad Mfg. Co. vs. S. & N. R. R. Co., Unreported Op. 586.

Compare—

Jaynes vs. P. R. R. Co., 83 Atlantic Rep. 318, 319.

The Commission has passed upon the propriety of estimated weights in numerous instances and in connection with various articles.

This practice has been declared permissible in billing cotton at a proper estimated weight per bale, when actual weights can not be ascertained, and transportation charges are promptly adjusted upon the basis of actual weights furnished the consignee.

See—

Phelps & Co. vs. T. & P. R. Co., 6 I. C. C. Rep. 36, 4 I. C. R. Rep. 44.

Jerome Hill Cotton Co. vs. M. K. & T. R. Co., 6 I. C. C. Rep. 601.

The Commission has also recognized the right of carriers, in order to facilitate the movement of business, to fix an estimated weight upon certain standard packages upon which a rate is based. This estimated weight is taken into consideration in the making of the rate itself, and of such estimated weight shippers have the right to complain before the Commission.

White & Co. vs. B. & O. S. W. R. Co. et al., 12 I. C. C. Rep. 306, 307.

Thus vegetables in standard crates of fixed dimensions, under proper tariff authority, may lawfully be transported upon estimated weights per crate.

In the Matter of Alleged Unlawful Charges for Transportation of Vegetables, etc., vs. S. F. & W. R. Co., 8 I. C. C. Rep. 585.

The same rule is applied to apples on estimated weights of 160 pounds per barrel.

White & Co. vs. B. & O. S. W. R. Co. et al., 12 I. C. C. Rep. 306, 307.

There are many commodities shipped in containers or packages of fixed dimensions that are recognized as standard. These commodities are generally moved by the carriers upon estimated weights assigned to each con-

tainer or package. The sole and only purpose of adjusting rates in that manner is to avoid the delay, expense, and labor incident to the actual weighing of each particular shipment. Estimated weights for standard containers or packages are intended to be the fair average actual weight, and are not fixed for the purpose of giving to either the shipper or to the carrier an advantage in the matter of freight charges. On the contrary, such tariffs are established simply to expedite the service and minimize the labor and expense of carriage.

Davies vs. I. C. R. Co., 16 I. C. C. Rep. 376, 379.

Certain standard packages, such as barrels of flour, have an estimated weight based upon experience of actual weights, and this is true of any commodities that are shipped in packages. Estimated weights of articles measured by the cubic foot or cubic yard can be made very close to the actual weights.

It is not to be understood from this that actual weighing is to be dispensed with in determining carload weights upon which freight is to be collected. There are, however, many instances in which an estimated weight, prescribed in carrier's tariffs, is entirely satisfactory to shippers and carriers, and is recognized as reasonable. (See *White & Co. vs. B. & O. S. W. R. R. Co. et al., supra.*)

Georgia Rough & Cut Stone Co. vs. Ga. R. Co. et al., 13 I. C. C. Rep. 401, 403.

For many years millinery has been accepted by express companies at regular merchandise rates on the actual weight of the shipments, regardless of the bulk of the packages. In that respect such traffic has been on an equal footing with other merchandise. But during 1906 the express carriers in their general classification pub-

lished rules providing for the application of minimum weights on shipments packed in pulp or corrugated paper cartons, exceeding certain specified dimension, unless also crated or boxed. In the latter even the rules provided for the assessment of charges on the basis of the actual weight. No minimum weights were fixed for shipments in wooden cases or boxes. In these rules the defendants also took measures to stop the practice of shipping what are referred to in the nomenclature of express business as "balloon packages," a phrase used by the express carriers as descriptive of pasteboard boxes and pulp cartons of light weight but of extreme size. This result was accomplished by rules forbidding the acceptance of ordinary pasteboard or strawboard boxes, not crated, and exceeding 50 inches in exterior dimensions and of corrugated paper cartons uncrated and exceeding 90 inches. Boxes and cartons of greater magnitude than these are admittedly not safe containers when uncrated. The rules of 1906 also fixed 110 inches as a limit in the size of boxes and cartons that would be accepted even when crated. It may be well to explain that a carton or box of a stated number of inches means a box the exterior length, width, and depth of which aggregate that number of inches.

Before the rules of 1906 were adopted the jobbers in millinery had always used wooden boxes or heavy crates for shipping feathers, hats, and other like materials; they had also indicated to the express carriers that it would not be practicable to crate such merchandise. Nevertheless, shortly after rules had been promulgated, they began to ship materials of that light and bulky character in thin pasteboard boxes with no better protection than that afforded by light wooden crates. In that form the shipments were billed, under the rules and tariffs then in effect, at their actual weight. The milliners were thus able to

avoid the higher minimum weights that would have been applicable had the merchandise been packed in substantial corrugated cartons without crates. In other words, by substituting a light wooden crate inclosing a number of thin pasteboard boxes for the more secure and convenient cartons formerly used without crates, the shippers were able to avoid charges based on the minimum weights prescribed for uncrated cartons, and at the same time the express companies were put in a position of carrying the shipments at actual weight and in an insecure and inconvenient container.

It was to meet this change in the methods adopted by the jobbers for packing their goods that the rules were revised and made effective as heretofore stated on August 1, 1909. The minimum weights applicable under the rules of 1906 on shipments in pulp and corrugated paper cartons were republished, and the same minimum weights were also established for shipments packed in ordinary strawboard or pasteboard boxes when inclosed in crates. The rules as thus modified in 1909 were as follows:

Exterior dimensions—	Ordinary strawboard in corrugated paper or paper boxes of pulp cartons			
	Not		Not	
	Crated	crated	Crated	crated
	Act. Wt.	Act. Wt.	Act. Wt.	Act. Wt.
Not over 50 inches.....				
Over 50, not over 70 inches...	do	Refused	do	do
Over 70, not over 75 inches...	30 lbs.	do	do	30 lbs.
Over 75, not over 80 inches...	40 lbs.	do	do	40 lbs.
Over 80, not over 90 inches...	50 lbs.	do	do	50 lbs.
Over 90, not over 100 inches...	60 lbs.	do	do	Refused
Over 100, not over 110 inches...	70 lbs.	do	do	do
Over 110 inches.....	Refused	do	Refused	do

It will be observed from this table that corrugated cartons when crated were refused if larger than 110 inches in exterior dimensions, and were refused when uncrated if over 90 inches; and that strawboard or pasteboard boxes

were refused when in excess of 50 inches if uncrated or over 100 inches when crated. It will be noted that the actual weight controls the charges on pasteboard boxes of less than 50 inches and on corrugated cartons of less than 70 inches in exterior measurement, while minimum weights are applicable on containers exceeding those sizes. These minimum weights in the ordinary and usual experience of millinery jobbers seem to exceed the actual weight of shipments in containers of the sizes specified. But the jobbers seem to agree in the opinion that crates and wooden boxes involve an expense that more than absorbs the difference in charges based on the assigned minimum weights and charges based on the actual weights of shipments in crates and wooden boxes. The result therefore of the adjustment of 1909 is that it costs less to pay the prescribed minimum weights on uncrated cartons of light and bulky articles than to crate such cartons or to use wooden boxes.

Shipments in the ordinary pasteboard and strawboard boxes are peculiarly liable to injury and damage in transit. The risk involved in the carriage of millinery traffic relates chiefly, if not wholly, to shipments in pasteboard or strawboard boxes.

The Commission said: "We are brought to the conclusion that the rules and regulations of the defendants are unreasonable so far as they apply minimum weights on corrugated paper or pulp cartons when uncrated, instead of assessing the charges on the basis of their actual weight. The effect of those regulations is the assessment of charges for the transportation of such shipments which we find to be unreasonable, and in our opinion such shipments ought to be carried at the merchandise rates as applied to their actual weights."

Millinery Jobbers' Assn. vs. Am. Express Co. et al., 20 I. C. C. Rep. 498, 500.

With the introduction of the paper carton as a covering for the packages of liquor came the adoption of the system of charging on arbitrary weights instead of the actual weight. Packed in a wooden box a gallon of liquor weighed 18 pounds; in a paper box a gallon of liquor weighed 3 or 4 pounds less, but the express companies based their charge on the former weight of 18 pounds. These arbitrary weights applied only to bottles and stone jugs; when the glass containers came into use they were carried at actual weight, and this created a discrimination in their favor of 3 or 4 pounds.

The express classifications filed in August, 1910, introduced several innovations in the liquor schedule. The discrimination between glass containers and stone jugs was removed in response to protests from the southern users of jugs, and both were carried at the arbitrary weight. Specifications as to the construction of the corrugated paper boxes were introduced in order to reduce the large percentage of loss from breakage. Containers or jugs of more than 1 gallon capacity were excluded from the schedule on the ground that the liability to breakage and the percentage of loss were greater with the larger packages than when the same amount of liquor was divided among several packages. These were the changes introduced by official classification No. 20. The Southern Express Company, in response to the violent protests of its customers, restored the earlier classification in its main features by supplement No. 2 to exceptions issue No. 3. This still discriminated against the larger sized packages.

The Commission, speaking to the issue of arbitrary weights, said:

"Without going into the details of the evidence, it may be summed up by saying that the charging of arbitrary

weights was not justified, while the necessity for stronger cartons was made apparent."

A compromise classification (Supp. No. 6 to O. C. No. 20) resulted from the Commission attitude toward the use of arbitrary weights, which abolished the system of arbitrary weights and provided for the carriage of all packages at actual weight, except in the rare cases where the use of the arbitrary weight would result in a lower charge. The specifications as to paper cartons are retained. Single packages of greater capacity than 2 gallons are rejected, and the requirements as to wrapping 6 quart bottles contained in one box are raised so as to remove the discrimination between them and the gallon package. Stone jugs and glass containers are placed on exactly the same footing.

In the Matter of the Investigation and Suspension of Advances in Rates by Express Companies for the Transportation of Liquor, 21 I. C. C. Rep. 199, 201.

In the case of Sun Company vs. Indianapolis Southern Railroad Company et al., 22 I. C. C. R. 194, the complainant shipped 109 tank cars of crude oil from Stoy, Ill., to Des Moines, Ia., 1 car to Ottumwa, Ia., and 45 cars to Sioux Falls, S. Dak., between January 25, 1909, and November 15, 1910. The shipments were consigned to gas plants, and all but one were billed as "gas-making oil." The shipping weight was computed by the complainant on the basis of either 6.4 or 6.6 pounds per gallon, dependent on the date of shipment, on the gallonage capacity of the cars. Defendant's inspectors, however, raised the weight to 7.4 pounds per gallon and collected charges on that weight. Reparation was prayed to official classification basis of estimated weights.

The Official Classification provides an estimated weight on petroleum and its products, including crude, fuel and

gas oils, of 6.6 pounds per gallon, an increase effective January 1, 1910, from 6.4 pounds per gallon.

The Southern Classification contains similar provision.

The Illinois classification provides for an estimated weight on petroleum and its products of 6.6 pounds per gallon.

Prior to October 1, 1913, under the Western Classification, petroleum and the products thereof were carried at an estimated weight of 6.4 pounds per gallon. On that date crude oil was withdrawn from this provision and the estimated weight thereon was increased 7.4 pounds per gallon. On August 1, 1907, the estimated weight on fuel oil was also increased to 7.4 pounds per gallon. On May 1, 1910, the estimated weight on all oils, excepting crude and fuel, was increased from 6.4 to 6.6 pounds per gallon.

The shipments from Stoy moved under three classifications, dependent upon the destination and direction of the shipment. That is, on shipments east the Official Classification governs; westward to points west of the west bank of the Mississippi River the Western Classification applies; and westward to points on and east of the Mississippi River the Illinois Classification governs. The Western Classification is applicable from Stoy to all the points of destination to which the shipments involved in the case were made.

Crude oil, as the name implies, is the natural oil as it comes from the wells. It is distinguishable from refined oils by its odor and different color. Commercial gas oil is a loose term; oils, both refined and crude, are used for gas-making purposes, but, chemically, gas oil is a distillate of crude oil, some of the heavier or lighter constituents having been removed.

The crude oil referred to in this case weighed from 7.08 to 7.12 pounds per gallon. Under another contract this

oil was supplanted with a gas oil weighing from 7.37 to 7.43 pounds per gallon, supplied by the Standard Oil Company's Sugar Creek Refinery.

The difference in the estimated weights added $12\frac{1}{2}$ per cent to the rate on crude oil. Crude oil is sold on so close a margin that a slight difference in the price per gallon is sufficient to lose or secure the business.

Petroleum and its products are carried at the same rates. In 1906 the consulting chemist for the Western Classification Committee made tests for the committee of from 150 to 300 samples of petroleum oil from wells in western classification territory, with the following results:

Kind of oil—	Samples from wells and refineries in—	Av. act. wt. per gallon
Illuminating oil.....	Kansas, Texas, Indian Territory, and Missouri.....	6.762
Engine oil.....	Texas	7.689
Neutral oil.....	Indian Territory	7.178
Fuel oil.....	Kansas, Missouri, Indian Territory	7.513
Gas oil	Kansas and Missouri.....	7.253
Lubricating oil.....	Texas and Kansas.....	7.458
Crude oil	Colorado, Kansas, Louisiana, and Indian Territory.....	7.335
Gasoline	Colorado, Kansas, Missouri, Texas, and Indian Territory..	5.983
Cylinder oil.....	Texas, Louisiana, and Indian Territory	7.856
Naphtha	Indian Territory.....	6.192

Another test was made of 50 samples of Kansas oil, with the following results:

Average actual weight per gallon—	Pounds
Gasolines	6.10
Naphthas	6.20
Illuminating and water white.....	6.70
Lubricating and neutral.....	7.35
Gas oil and crude oil.....	7.10
Fuel oil	7.40
Residuum	7.60

It will be noted that gasoline and naphtha are the only ones of these oils which weigh less than the estimated weight.

Previous to the August 1, 1907, adjustment of fuel oil to the same weight basis as that of crude oil, the Commissioner of Corporations of the Department of Commerce and Labor reported as follows on the estimated weights applicable to the transportation of petroleum (May 2, 1906):

"The railroad companies serving the Kansas field are perfectly aware of the injustice of fixing a higher arbitrary weight on crude oil than on gas oil and fuel oil produced by the refineries. The matter has been up before them for consideration, but the power of the Standard Oil Company has been sufficient to compel them to continue the unjust discrimination."

The Commission, in passing upon this important question, said:

"We have here a somewhat peculiar situation. The rule attacked is in the Western Classification with respect to traffic carried by lines the majority of the mileage of which is (leaving southern territory out of consideration) in Official Classification territory, and the greater portion of the distance the traffic was carried was in a state which, having a classification of its own and normally in Official Classification territory, is actually, by tariff application, in all three classification territories. Therefore, so far as the estimated weight is concerned, whether crude oil is actually that commodity or a petroleum product is not dependent upon its character, but upon the direction in which it moves.

"From this situation it results that by rebilling a tank car of crude petroleum at a Mississippi River crossing the aggregate charges are lower than the amount charged at

the joint rate and higher estimated weight. To illustrate: A car of oil estimated to weigh 59,200 pounds at 7.4 pounds per gallon could in 1909 have been shipped through from Stoy to Ottumwa at a rate of 22.56 cents per 100 pounds, or a total charge of \$133.56. On a commodity rate of 15 cents and estimated weight of 6.4 pounds per gallon, from Stoy to East Burlington, Ill., or Burlington, Iowa, the charges would have been \$76.80. On the fifth class rate of 7.7 cents and estimated weight of 7.4 pounds the charges from East Burlington to Ottumwa would have been \$45.58, a total charge on combination of \$122.38. Notwithstanding the aggregate of intermediate rates is slightly higher than the through rate, complainant could have saved \$11.18 by rebilling at East Burlington; and on shipments to Des Moines or Sioux Falls, inasmuch as the distances are greater, the differences would be more marked. . . .

"From the tables it is seen that gas oil from Kansas and Missouri is 0.082 pounds lighter per gallon than crude oil from Colorado, Kansas, Louisiana and Indian Territory, and in Kansas they weigh the same. The lighter oils, illuminating oil, naphtha and gasoline move in greater volume in the east than do the heavier oils, such as lubricating oil and crude oil. It appears that western oils are heavier than eastern oils. Making allowance for temporary variations, gas oil and crude oil sell at approximately the same price. They are both used for making gas.

"Gas oil and crude oil are like commodities, transported under substantially similar circumstances and conditions as to rates and carriage, and are competitive.

"To estimate gas oil as weighing so greatly less than its actual weight, and crude oil in excess of its true weight is, and for the future will be, unjustly discriminatory

against crude oil and the shippers thereof, and unduly preferential to gas oil and the shippers thereof."

See also—

Davies vs. I. C. R. R. Co., 16 I. C. C. Rep. 376.

Cantaloupes, packed in crates, are shipped in carloads from stations in the Rocky Ford district (Colorado) mainly to eastern cities. The tariffs of the carriers specify certain dimensions for the crates, known as the standard crate, $12\frac{3}{4}$ inches by $12\frac{3}{4}$ inches by 24 inches, containing 3,901.5 cubic inches, estimated weight 66 pounds, and the pony crate, $11\frac{3}{4}$ inches by $11\frac{3}{4}$ inches by 22 inches, containing 3,037.375 cubic inches, estimated weight 53 pounds.

A shipper of these cantaloupes made shipments in a one-third flat standard crate, $4\frac{1}{2}$ inches by $13\frac{1}{2}$ inches by 24 inches, containing 1,458 cubic inches, and one-third flat pony crate, 4 inches by 12 inches by 24 inches, containing 1,152 cubic inches. These crates were claimed to be one-third the dimensions, capacity and weight of the crates specified in the tariffs, and therefore it was contended that the weight upon which the charges were based should have been one-third the weight of the crates specified, viz., 22 and 18 pounds, respectively. The tariffs contained no provision for the one-third size crates, and charges were assessed based upon their alleged actual weight of 30 and 25 pounds, respectively.

In dismissing a prayer for reparation, the Commission said:

"In the absence of a tariff provision for estimating the weight, when the one-third-size crates were offered for shipment, the agent of the initial carrier tested the weight by weighing at intervals a stated number of crates, it being impracticable to weigh all of them. This test was participated in by the agent of the local express company, and

as a result the crates were thereafter billed at 30 and 25 pounds, respectively. The complainant company was the shipper and executed the bills of lading and inserted the weights on basis of 30 and 25 pounds without protest to the defendants' agent. The tests applied by complainant to crates of cantaloupes subsequent to filing this complaint show that such crates weighed materially more than the weight contended for.

"When the weight of a full-size standard crate is compared with the weight of a so-called one-third crate, it is palpable that the contention of complainant is unsound. The dimensions of the one-third crates and their cubical capacity are greater than one-third of the dimensions and cubical capacity of the standard crates, and the aggregate weight of three of them is greater than the weight of the standard crate, as further appears from the statement of weights offered in evidence by complainant. Taking into consideration the dimensions of the smaller crates and the additional tare for three packages, it results that an estimated weight for the smaller package based upon one-third of the weight of the standard package, under the facts of this case, will not suffice to overcome the evidence presented by defendants respecting the actual weight of the shipments.

"The defendants subsequently incorporated in their tariffs a provision covering estimated weights of 30 and 25 pounds, respectively, for the one-third crates, and they assert that a like provision has been incorporated in the tariffs of other originating lines in Colorado.

"Upon consideration of all the facts disclosed by the record, it is the conclusion of the Commission that the weight of the shipments upon the basis of which the

defendants collected their charges has not been shown to have been excessive or discriminatory.”

Byrnes, Trustee, etc., vs. Atchison, etc., Ry. Co., et al., 22 I. C. C. Rep. 585, 586.

Natl. League of Com. Mer., etc., vs. A. C. L. Ry. Co., 20 I. C. C. Rep. 132, 135.

§ 9. Discrepancies in Origin and Destination Weights.

The presumption in law is that the shipper shall pay transportation charges only the actual weight of his shipment, and the permissible estimated and minimum weights provided in lawfully established tariffs are but proper exceptions thereto to meet conditions where the ascertainment of correct weights is impracticable.

The duty of the carrier is to provide facilities for the determination of correct weights, and any test of the correctness of transportation charges invokes the weight as well as the rate.

The Commission has held it to be the duty of the carriers to reweigh each car within one year from the date when it is put into service or after it undergoes substantial repairs, and also to reweigh every car at least once in every two years that the ascertainment of stenciled weights may be substantially accurate.

It is the right of the shipper to have his car reweighed if the weight is incorrect, and this right applies to a switch-movement to the private scales of the shipper.

The Commission made an exhaustive investigation of weighing facilities and methods employed by the carriers and condemned the faulty construction of track scales existing in a very considerable part of the country and required that a track scale which is in use should be inspected and balanced every day and tested by the test car at least once in two months, and, in many instances,

where conditions render necessary, once every month. And, further, it is just as essential to provide a competent operator as to furnish a suitable scale, since so far no device has been invented which will dispense with intelligence, faithfulness and ability on the part of the scale operator.

The governmental duty of exercising authority over the installing and testing of track scales is local in its character and the different states should be encouraged to assume and exercise an actual jurisdiction in this respect.

It has been the recommendation of the Commission that some federal tribunal, perhaps the Commission, should be given authority to fix the points at which track scales should be installed, to provide the standard of such scales and their installation, to test or supervise the testing of such scales and to supervise the operation.

The improvement in accuracy of shipping weights throughout the country has been marked and beneficial in the last two years.

The Commission has sought at all times to conserve the interests of both the shipper and the carrier in the regulation of weights. There is no rule by which the weight shown at destination is entitled to more consideration than that shown at point of origin, when both weights were ascertained by the same method. But where a shipper is notified of an advance in the weight of a car during the course of transportation, he should be permitted, without any expense to him, to require a third weighing of the car. He should also be allowed, without liability to demurrage charges, a sufficient time in which to examine into the weight of the car before it is unloaded. If no claim of overweight is made before the unloading of the car, then no such claim should be entertained. However, if the shipper for his own purposes requests a second weighing

there is no apparent reason why he should not pay a reasonable sum for this service, unless it appears upon such reweighing that the original weight was erroneous, and the shipper, therefore, justified in asking that the car be reweighed.

Bananas are imported from two general sections of the semi-tropics. Those entering the eastern ports, such as Savannah and Baltimore, come from Jamaica, Cuba and other West Indian islands, while those coming to the Gulf ports are almost exclusively from Central America. The bananas produced in these two sources of supply differ in that the latter are much heavier than the former. The boats of the fruit company reach both New Orleans and Mobile, and there the bananas are loaded on special trains which are in waiting and are hurried to final destination on the fastest schedule applied to any freight traffic moving over the carriers' lines—a schedule faster than obtains as to many passenger trains. This schedule calls for an excess of 30 miles per hour. The average time between New Orleans and Kansas City, a distance of 897 miles, is between 55 and 60 hours.

One of the conditions upon which sales are made by the importing fruit company is that "the certificate of the official weigher respecting the weight of the bananas or the fruit in any given cars or shipment at the seaboard shall be final and conclusive upon both parties;" that is, the fruit company and the consignee. The railroad charges are based upon the same weight. It becomes necessary, therefore, to have the cars correctly weighed, and to accomplish this two weighers are designated—one the public weigher of the city of New Orleans, holding a certificate from the New Orleans Board of Trade and bonded to that corporation, who represents the fruit company; the other an appointee of the Southern Weighing

Association who is assigned for this work and who is paid by that association. The cars are taken to the scales and weighed singly, each car being uncoupled from the balance of the train while on the scales. The empty weight is written on a tag and attached to the car, which is then placed in the train back for loading. When loaded the train is again moved to the scales and each car weighed separately, the net weight being thus ascertained. These scales are inspected weekly by the city of New Orleans twice a month.

Under an allegation that the assessment of freight charges on the basis of the weights ascertained at point of origin instead of at destination was unjust and unreasonable, the Commission said:

The Commission can not perceive how it is practicable to more correctly weigh the fruit than by the method employed at New Orleans, and the fruit is weighed in the same manner at Mobile. How two weighers more independent of each other could be secured is not known. One is presumably a direct representative of the consignor from whom the complainants purchase fruit, the other is an official appointed by the Southern Weighing Association, of which the defendants are members. No complaint is made as to the manner of the actual weighing, but it is intimated that the weights are not correctly reported. There was no proof of this, but it seems to have been assumed because of the alleged difference in weights at point of origin and point of destination. While it is possible that these weighers may be corrupted into making false returns, the same is equally true of the weighing at destination. Since these cars are destined to different points throughout the entire country after leaving New Orleans it would be a practical impossibility for the railroad to have a representative at each unloading point. It is true

that cattle are weighed at destination rather than at origin, and this practice is based upon exactly the same reasons that bananas are weighed at point of origin instead of destination. In both cases the weight is ascertained where the cars are concentrated."

The Commission found the practice neither unjust nor unreasonable, and that the apparent discrepancies between origin and destination weights was due mainly to the shrinkage of the bananas in transit.

Topeka Banana Dealers' Assn. vs. St. L. & S. F. R. R. Co. et al., 13 L. C. C. Rep. 621, 622.

In re Weighing of Freight, 23 L. C. C. Rep. 7, 11, 12, 13, 17, 18, 29, 31, 33, 35, 36.

American Brake Shoe & Foundry Co. vs. Balt. Ry. Co. et al. Chatham, 23 L. C. C. Rep. 351, 353.

Browne Grain Co. vs. C. C. & S. F. Ry. Co., 23 L. C. C. Rep. 163, 164.

Peters vs. O. S. L. R. R. Co., 21 L. C. C. Rep. 594, 595.

Duluth Log Co. vs. C. St. P. M. & O. Ry. Co., 13 L. C. C. Rep. 38, 39.

Clearfield Lumber Co. vs. N. Y. C. & St. L. R. R. Co. Unreported Op. A. 74.

Fling, Erving & Storer Co. vs. N. E. W. R. R. Co. Unreported Op. A. 41.

See also—

Kansas City Live Stock Exchg. vs. A. T. & S. F. Ry. Co., 34 L. C. C. Rep. 423, 424.

Grain Elevation Allowances at Kansas City, 34 L. C. C. Rep. 441, 443.

Western Trunk Line Rules, 34 L. C. C. Rep. 554, 571.

National Pile Co. vs. M. & I. Ry. Co., 33 L. C. C. Rep. 372, 373.

National Casket Co. vs. S. Ry. Co., 31 L. C. C. Rep. 673, 682, 683.

Schenck vs. N. E. W. Ry. Co. et al., 29 L. C. C. Rep. 123, 127.

Sunderland Bros. Co. vs. C. B. & Q. R. R. Co., 21 L. C. C. Rep. 632, 636.

Wheeler L. B. & S. Co. vs. A. & C. R. R. Co., 20 L. C. C. Rep. 10.

Rice vs. Georgia R. R. Co., 14 L. C. C. Rep. 73, 81.

(1) **"Tolerance" in Weight.** "Tolerance" in weight is a term now applied to justifiable differences in weights of a shipment at origin or initial weighing point and at destination or reweighing point. In speaking of "tolerance" in its investigation of weighing of freight (1) the Commission said:

"It will be readily appreciated that the exact weight of the contents of a car can not be ascertained by the use of track scales. We have already seen that the scale itself should be regarded as accurate until an error of at least 100 pounds is shown. We have further seen that the tare weight of the car is stated in multiples of 100 pounds and is treated as correct until an error exceeding that amount appears. It has also been noted that some of the coarser commodities which are most frequently the subject of transportation shrink several hundred pounds in transit. From these and other causes it is admitted on all sides that there must be a limit of error within which the ascertained track-scale weight of a carload of freight shall be deemed to be correct. This limit is known as 'tolerance,' and is in most jurisdictions 500 pounds, but in the jurisdiction of the Western Weighing Association and Inspection Bureau, which covers most territory on the west of the Mississippi River and east of the Pacific coast states, is 1,000 pounds.

"In our opinion 1,000 pounds is too great. In case of a commodity which only loads 20,000 pounds to the car, and there are many such, it means a twentieth of the entire loading. This is a very significant item in the assessment of the freight charges, and is even more significant when the question is whether the carrier has delivered the full carload to the consignee. Even in case of coarser com-

(1) In re Weighing of Freight by Carrier, 28 I. C. C. Rep. 7, 29, 30.

modities, like lumber and coal, weight should be more accurately ascertained than is contemplated by this measure of error. If one tolerance is to be fixed for the weighing of all commodities 500 pounds would seem to be large enough.

"It has been suggested that the measure of tolerance should vary with the character of the commodity transported. Evidently accuracy in the matter of weight becomes important in proportion to the value of the article, when the question is as to whether the entire carload has been delivered, and in proportion to the amount of the rate, when the question concerns merely the assessment of freight charges. No workable rule has, however, been suggested upon this basis; on the whole there seems to be among shippers very little objection to a tolerance of 500 pounds, and we think this may fairly be regarded as reasonable."

Kansas City Live Stock Exchg. vs. A. T. & S. F. Ry. Co., 34 I. C. C. Rep. 423.

Schenck vs. N. & W. Ry. Co., 29 I. C. C. Rep. 125, 127.

Hoyt & Bergen vs. C. & W. W. Ry. Co., 32 I. C. C. Rep. 319, 508.

Fabrication in Transit Charges, 29 I. C. C. Rep. 70, 89.

Saginaw Milling Co. vs. M. C. R. R. Co., 33 I. C. C. Rep. 25, 30.

Hull Co. vs. S. Ry. Co., 24 I. C. C. Rep. 302, 303.

Wheeler L. B. & S. Co. vs. A. & C. R. R. Co., 20 I. C. C. Rep. 10, 11.

Baltimore Chamber of Commerce vs. P. R. R. Co., 15 I. C. C. Rep. 341, 344.

Topeka Banana Dealers' Assn. vs. St. L. & S. F. R. R. Co., 13 I. C. C. Rep. 620, 625, 626.

§ 10. Bill of Lading Weight; When Weight is Ascertained at Origin Point; Conclusive.

Positive evidence of the incorrectness of a carriers' weight is necessary before another weight can be sub-

stituted. A tariff provided that the rate should be assessed upon the actual weight, and the bill of lading is conditioned that the weight stated is subject to correction. The actual weight of the shipment should therefore govern. When the car is weighed at the point of origin and the weight stated in the bill of lading the shipper has a right to rely upon that weight and the carrier should only be allowed to change the weight upon satisfactory proof of the correctness of the substituted weight.

Duluth Log Co. vs. C. St. P. M. & O. R. Co. et al., 16 I. C. C. Rep. 38, 39.

Peters vs. O. S. L. R. R. Co., 20 I. C. C. Rep. 598, 599.

Browne Grain Co. vs. G. C. & S. F. Ry. Co., 20 I. C. C. Rep. 163, 164.

Reliance Mfg. Co. vs. A. G. L. R. R. Co., Unreported Op. 562.

Allen vs. P. R. R. Co., Unreported Op. 415.

Barker vs. L. & N. R. R. Co., Unreported Op. A-54.

§ 11. Billing at Fictitious Weights Instead of Actual Scale Weights Condemned.

A rule of a carrier subject to the Act to Regulate Commerce, by which shipments of stone from non-scale points are billed from such points at weights equal to the marked capacity of the cars, subject to correction when weights are taken, is unreasonable, because upon such cars as are not in fact weighed before delivery the carriers proceed to collect freight upon such marked capacity weights. A change of such rule to a rule that such shipments shall be billed at the published carload minimum held to be also indefensible. The Commission ordered the carrier to desist and refrain from showing purported weights upon its billing until such weights shall have been ascertained either by weighing or some fair method of computation from cubic contents.

Romona Oolitic Stone Co. vs. Vandalia R. R. Co., 13 I. C. C. R. 115.

Romona Oolitic Stone Co. vs. C. I. & L. R. Co., 13 I. C. C. R. 569.

§ 12. Billing at Net Weights.

A practice of billing the packages of shippers in a defined territory at the net weight of their contents, while many other shippers of the same commodity in other portions of the same territory were charged higher rates through billing at the full weight of the packages and contents, was condemned by the Commission as unlawfully discriminatory.

Proctor & Gamble Co. vs. C. H. & D. R. R. Co. et al., 9 I. C. C. R. 440.

§ 13. Reweighing.

A rule providing that upon demand of consignee, and upon consignee depositing with carrier's agent the sum of \$2, the carrier will reweigh a carload shipment, and if such reweighing discloses a variation of more than 2 per cent, with minimum of 1,000 pounds, from original shipping weight, original weight and charges will be corrected accordingly and the \$2 reweighing charge be refunded to the consignee, was attacked as unreasonable. The rule further provided that if the reweighing failed to disclose such variation of 2 per cent, with minimum of 1,000 pounds, original weight and charges will not be changed and the reweighing charge will be retained by the carrier.

The Commission in passing upon the question declared:

"Theoretically, a shipper should not pay freight on more than the actual weight of the commodity shipped, and, under the same principle, the carriers should receive revenue on the actual weight carried. By reason of the varying and changing conditions, * * * it is almost impossible to accurately follow that theory or principle. The best that can be done is to make a regulation that,

in the light of experience, will come nearest doing substantial justice between all shippers and carriers on all kinds of commodities.

"Upon the entire record in this case we are unable to say that a charge of \$2 for the reweighing of cars of coal is unreasonable or that it may not be reasonably exacted. We think that the regulation may provide for the deposit of said sum with the application for a reweighing. The small difference in weight per car disclosed by the experiment of the Southern Railway would indicate that the amount of difference in weight required by the present regulation before change in weight or revenue is made is too large and might reasonably be lower. We think that the original weight should be corrected whenever reweighing shows a difference of 1 per cent either above or below the original weight, such difference in either event to be not less than 500 pounds, and that the charges should be corrected in accordance with that corrected weight; that if the reweighing shows a weight 1 per cent less than the original weight and equal to the minimum of 500 pounds the reweighing charge should be refunded; that is the reweighing shows an overweight of 1 per cent, which equals at least 500 pounds, the billing should be corrected to correspond to that overweight and the freight be collected thereon, and the \$2 should likewise be refunded. If the reweighing shows a difference of less than 1 per cent over or under the original weight no change should be made in weights or in the charges, nor should the reweighing charge be refunded. Where the reweighing shows less than the original weight no change should be made in the weight or charges that would result in charges less than upon the tariff minimum provided for in that car."

Rice vs. Ga. R. R. Co. et al., 14 I. C. C. R. 75, 79.

Compare—Potter Mfg. Co. vs. C. & G. T. R. Co. et al., 5 I. C. C. R. 514, 4 I. C. R. 223, holding that where weights

at origin are furnished by shipper, carrier has right to verify such weights by reweighing, and if found to be incorrect, to collect charges on the corrected and actual weight.

See Chap. V, this volume, Sect. 9, "Discrepancies in Original and Destination Weights," and cases cited.

§ 14. Penalties for Over-Loading Cars.

It commonly happens that a commodity of extreme density is being shipped which will load into an ordinary car in excess of that car's marked capacity, and it is customary to permit a shipper to load 10 per cent in excess of marked capacity, and to provide a penalty, in the way of increased rate, for any loading in excess of such fixed weight above marked capacity. Such a regulation, if properly established by tariff publication in accordance with the provisions of the Act to Regulate Commerce, provided the charge for the excess weight is not unreasonable, and margin between such maximum and the carload minimum weight is sufficiently wide that shippers may, without scales, readily comply with both rules, is not unlawful nor in contravention of the Act to Regulate Commerce.

Suffern, Hunt & Co. vs. I. D. & W. Ry. Co., 7 I. C. C. R. 255.

See also—

Western Trunk Line Rule 8, 34 I. C. C. Rep. 554, 579.

§ 15. Billing Cars at Marked Capacity in Switching Service Not Unreasonable.

In Romona Oolitic Stone Co. vs. Vandalia R. R. Co., 13 I. C. C. R. 115, the Commission condemned a practice by which shipments of stone from non-scale points were billed at weights equal to the marked capacity of the cars. The weights in that case were applied to a line haul and the practice resulted in frequent overcharges. Although

the Commission adheres to the principle announced in that decision, it is not of the opinion that substantial justice requires its application to the switching service.

Prahlow vs. Ind. Har. Belt R. R. Co. et al., 19 I. C. C. R. 572, 574.

§ 16. Carrier's Loading Restrictions Cause Load to Weigh Less Than Minimum.

A carload of lumber shipped from Baker City, Ore., to Mammoth, Utah, was loaded to the maximum in bulk permitted by the restrictions of the carrier, but the weight of the load was less than the rated minimum of the car and charges were assessed on the basis of such minimum. The Commission held that such charges were unjust and unreasonable, and that the charges should have been made on the actual weight of the shipment.

Oregon Lumber Co. vs. O. R. & N. Co. et al., 19 I. C. C. Rep. 582.

§ 17. Unreasonable to Restrict the Weighing of a Commodity to Point of Origin.

The Commission has condemned a rule in a tariff providing that shipments of coal should not be weighed except at point of origin as a manifestly unjust and unreasonable requirement, and constituting no defense to an action involving the correct weight upon which transportation charges are collected.

Peters vs. O. S. L. R. Co. et al., 20 I. C. C. R. 598, 599.

Western Trunk Line Rules, 34 I. C. C. Rep. 554, 571.

Schenck vs. N. & W. Ry. Co., 20 I. C. C. Rep. 125.

In re Weighing of Freight by Carrier, 28 I. C. C. Rep. 7, 30.

§ 18. Weight of Shipments Packed in Ice.

The following rule—"Poultry, Dressed, G. S.: B. Charge upon the actual gross weight, except that an allowance of 25 per cent from the gross weight may be made

when it is necessary to use ice for preservation, and it is used for that purpose only. The charge on a shipment packed with ice must not be less than the charge on the net weight, with 25 per cent added, unless the gross weight at the time of shipment is less,"—was declared by the Commission to be "ambiguous and susceptible of more than one meaning. Apparently the second sentence was intended as fixing a maximum as well as a minimum basis of charges. As commonly interpreted by the defendants (express carriers) in assessing their charges, the phrase 'net weight' refers to the weight of the poultry apart from the weight of the container and the ice. By adding 25 per cent to the net weight, we arrive at an arbitrary or a minimum weight on which the express charges are to be assessed in all cases except where 'the gross weight at the time of shipment is less.' This occurs when the weight of the poultry is so large that the arbitrary of 25 per cent of that weight, to be added, as the rule requires, exceeds the weight of the container and the small quantity of ice used. In such cases the gross weight of the entire shipment, being less than the net weight of the poultry, plus the 25 per cent added, becomes the maximum basis under the new rule for assessing charges."

The Commission condemned the rule as unjust and unreasonable and ordered the express carriers to establish a rule providing that shipments of dressed poultry when packed in ice shall be billed at 25 per cent less than their gross weight, but in no case at less than the net weight of the poultry, as invoiced by the shipper, plus the weight of the container.

Board of R. R. Comrs. of the State of Kansas vs. Adams Express Company et al., 21 I. C. C. R. 283, 284.

See Chap. V, this volume, Sect. 3, "Minimum Weights for Refrigerator Cars."

§ 19. Application of Minimum Weight to Overflow Shipment.

Under Western Classification No. 48, I. C. C. No. 6, Rule 8—"When the minimum carload weight or more of one article is shipped in one day by one consignor to one consignee, covered by one bill of lading, the established rate for a carload shall apply on the entire lot, although it may be less than two or more full carload lots"—to obtain the application of the carload rate on the actual weight of the part carload or overflow shipment, the entire consignment had to move upon one bill of lading. The securing of a bill of lading for each car renders the rule inapplicable, each carload becoming a separate shipment, subject to the prescribed minimum weight per car.

The Commission declared the rule neither unreasonable or unjustly discriminatory.

Scudder vs. T. & P. Ry. Co. et al., 22 I. C. C. R. 60, 61.

See also—

Scudder vs. T. & P. Ry. Co. et al., 21 I. C. C. R. 60, 61, holding to the same effect and that where two cars are shipped under one bill of lading the carrier can not compel the consignee to accept one car until the arrival of the second.

See also Chap. IV, this volume, Sect. 5, "Follow-Lot Shipments."

§ 20. Tank Cars.

The Commission holds that the minimum weight for a tank car should be the capacity of the tank. This, of course, is subject to such ventage as is provided for in the tariffs.

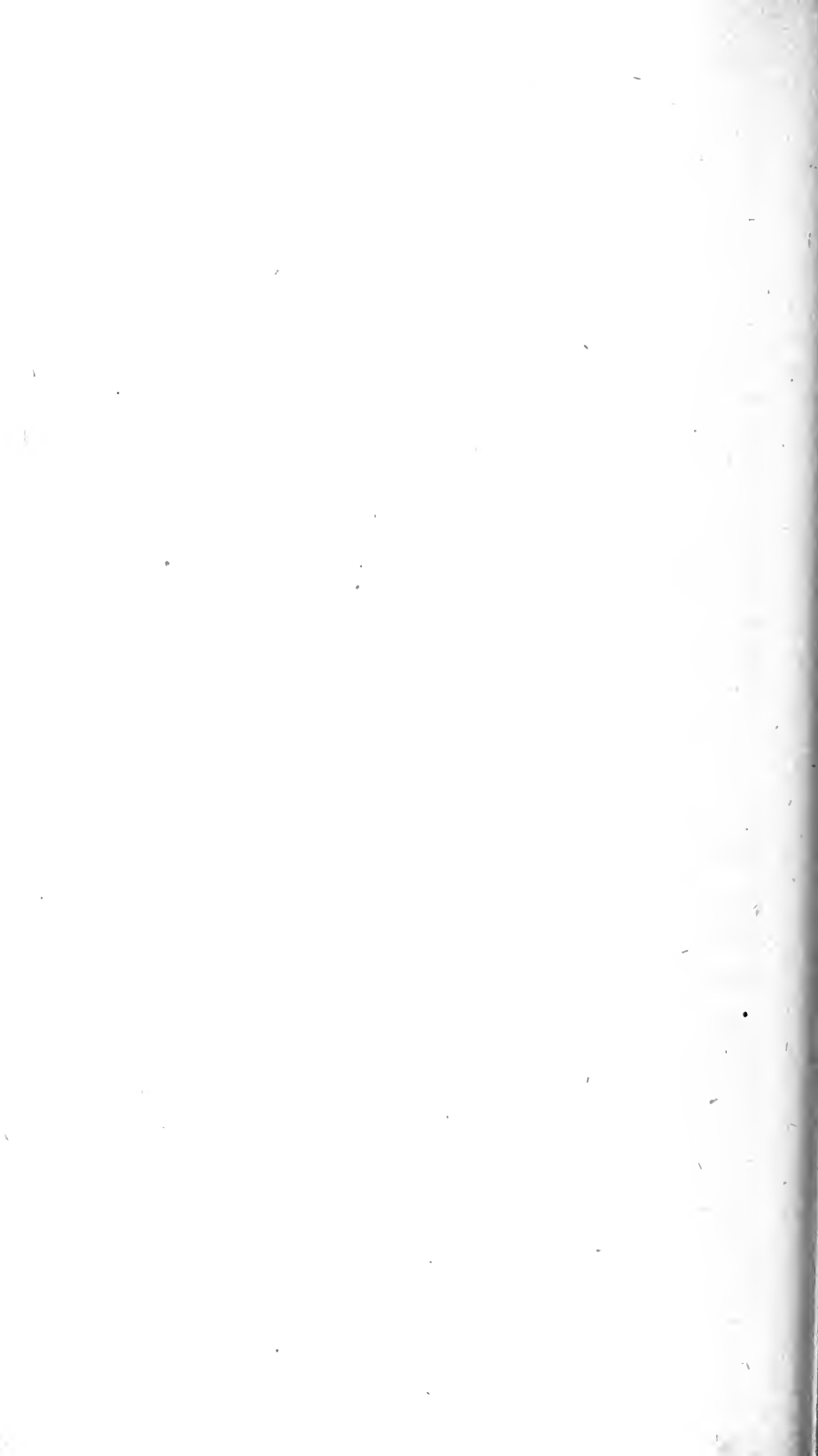
Rates on Asphalt and Asphaltum, 26 I. C. C. Rep. 614, 616.

See Chap. III, this volume, Sect. 3, "Minimum Weights for Tank Cars."

CHAPTER VI.

LOADING AND UNLOADING SERVICE.

- § 1. Nature of the Service.
 - (1) Loading Defined.
 - (2) Unloading Defined.
- § 2. Loading and Unloading Fruits and Vegetables in Packages at Chicago.
- § 3. Package Freight on Team Tracks Should be Loaded or Unloaded by Shipper.
- § 4. Carrier May Lawfully Charge for Loading or Unloading.
- § 5. Carrier May Unload and Release Its Equipment.
- § 6. Jurisdiction of Commission Over Loading and Unloading.
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- § 8. Loading Shed.
- § 9. Unloading Facilities Meeting General Requirements Need Not be Enlarged on Account Single Shipper.
- § 10. Loading and Unloading Rules Passed Upon by Commission.
- § 11. Cars of Certain Size Must Pay Rates Applicable Thereto.
- § 12. Reparation for Loading and Unloading Expense Caused by Carrier's Demand of Excessive Rate.
- § 13. Loading Long and Bulky Articles.
- § 14. Charge for Readjustment of Load in Transit Must be Provided for in Tariff.
- § 15. M. C. B. Rules Governing Loading of 60-Foot Steel Rails on Twin Cars.
- § 16. Light Loading of New Cars on Initial Trip.
- § 17. "Visible Capacity" of Car in Loading.



CHAPTER VI.

LOADING AND UNLOADING SERVICE.

It is only in connection with carload quantities of freight, or such quantities of freight as may move upon carload rates, or freight of such a special nature as to require unusual service in the loading or unloading of it, that the matter of loading or unloading shipments becomes important. With few exceptions, less-than-carload freight is loaded and unloaded by the carrier, and with the development of modern devices for the expeditious loading and unloading of goods there has of necessity been a corresponding development in the duty of carriers with reference to the acceptance and delivery of shipments.

§ 1. Nature of the Service.

The usual practice is for consignees to do their own unloading of carload shipments at destination. But clearly there is nothing in the law or in public policy that forbids a carrier to unload for them, if it does so for all shippers alike. Generally speaking, a carrier may build up its traffic by offering its shippers any facilities of that nature. And it has so been held both by the courts and by the Interstate Commerce Commission. (1)

Under the most restricted interpretation of the fifteenth section of the act the Commission has jurisdiction over any rule or regulation affecting the rate of transportation. A rule providing who shall load and unload the freight transported directly affects the rate, since it determines the

value of the service to the shipper. The reasoning of this conclusion is that whatever must be published by the carriers as a part of their tariffs and observed under the terms of the sixth section clearly so affects the rates of transportation that the Commission has jurisdiction over it under the fifteenth section. (2)

For the purpose of ascertaining how railroads themselves have treated the matter of loading and unloading freight, the Commission examined the three classifications in effect in this country in June, 1908, and found that of these three classifications the Southern still requires that shippers shall load and unload bulk freight in carloads. No mention whatever is made of freight other than bulk. The same was true of Official Classification from 1887 down to January 1, 1904, when the requirement that shippers load and unload was extended to all carload freight unless the convenience of the carrier otherwise required. Until recently, so far as the tariffs themselves show, carriers have not required shippers to load and unload carload freight except when that freight was what is known as bulk freight. The testimony in this case shows that notwithstanding the publication of the rule specified in the Western Classification in 1901 the carriers still continued to unload these packages at Chicago.

In its report the Commission said:

"The information which the Commission has from various sources outside this record indicates that in fact there has been no uniform practice in any part of the country with respect to the loading and unloading of what is ordinarily and properly termed package freight. Some kinds of package freight have been generally loaded and unloaded by the shipper; other kinds have been generally loaded and unloaded by the carrier. The practice in this respect has differed not only with commodities, but also with localities.

"Rule 5-B of the present Official Classification provides:

"In order to entitle a shipment to the carload rate the quantity of freight requisite under the rules to secure such carload rate must be delivered at one forwarding station, in one working day, by one consignor, consigned to one consignee and destination; except that when freight is loaded in cars by consignor it will be subject to the car-service rules and charges of the forwarding railroad.'

"This plainly indicates that at some points in Official Classification territory carload shipments are still loaded by the carrier, and it is easy to see that at some points, notably in the city of New York and with respect to some kinds of traffic, especially import and export traffic, it is necessary that the loading and the unloading should be done by the carrier.

"The investigations of the Commission show that where fruits and vegetables move under refrigeration the usual rule is that the carrier does the loading, and that when the shipper actually places the packages in the car he is allowed a certain sum for performing that service. It also appears that in New York at least, upon the Pennsylvania lines, these shipments are unloaded by the carrier.

"It can not be said that there is any rule of law which determines whether the shipper or the carrier shall do this loading and unloading; nor has there been any uniform and consistent practice in that respect. Until within the last five years carriers seem to have generally loaded and unloaded certain kinds of package freight; today the manifest attempt is to relieve themselves from this burden. Confining attention to the particular traffic under consideration, it has always been the rule that the unloading at Chicago and the reloading, when shipments were made from Chicago of this package traffic in fruits and vegetables, should be done by the carrier. Under the tariffs in

force since 1901 this ought not to have been so, but it has been. The question presented by this record is whether that requirement in the tariff as applied to this business, is a just and reasonable one.

"The definition of bulk freight, as insisted upon by the complainant, is freight which is loose and not put up or contained in any package. Apples thrown into a car would be bulk freight; contained in barrels they would be package freight. The carriers generally provide in their classifications that bulk freight will not be received in less than carload lots, and as used in that rule the above definition of the word bulk is probably the correct one.

"In the handling of carload business two general methods seem to be followed. According to one method the freight is transported by the carload, the carload being the unit. In this case the car is turned over to the shipper and loaded by him. The weight of the car is ascertained by weighing the car itself and deducting the tare. At destination the car is placed for unloading at some suitable or agreed place and is taken possession of by the shipper, who pays the freight and removes the contents. This is the method of shipment employed in handling articles like grain, coal, lumber and many others. Plainly, it makes no difference as to the liability of the shipper to unload this kind of freight, whether the article is loose in the car or is contained in packages which can be handled as such. Grain is uniformly handled loose in the east, but upon the Pacific coast it is shipped in sacks. Lumber is in pieces of various dimensions, while shingles and lath are put up in bundles. Hay is generally compressed in bales, although it might be, at the election of the shipper, trodden into the car without compression. Whether the shipper or the carrier should load and unload these commodities depends not upon whether the commodity is put

up in packages, but upon the nature of the commodity itself, or, rather, the manner in which it is handled.

“Certain other carload freight is handled upon an entirely different basis, of which these packages of fruits and vegetables furnish an excellent illustration. A carload rate is named usually by the 100 pounds, sometimes by the package. When the rate is by the hundred-weight each package generally has an estimated weight. A certain number of packages are counted into the car and receipted for by the carrier at the receiving end. At the delivering end these packages are counted out of the car and receipted for by the consignee. The rate is based upon the package; the carrier is responsible for the package. The consignor ought not to be required to protect the property after it has been counted into the car by the carrier; nor should the consignee be required to receipt for the property until it has been counted out by the carrier. While there is every reason for holding that the shipper should load and unload freight handled as a strictly carload proposition, there seem to be many reasons why, with respect to commodities handled by the package, the carrier should load and unload, even though the rating applied may be the carload; and such we think has been the usual practice in the past. Our conclusion, therefore, is that no general and invariable rule can be laid down applying to all business which takes a carload rate, but that each commodity must be considered by itself.” (3)

(1) Loading Defined. Loading carload freight by the carrier means the performance by it of service which the shipper ordinarily performs—that is to say, loading consists of taking the freight from a wagon, platform, or warehouse and stowing it in the car for shipment. (4)

(2) **Unloading Defined.** Unloading consists of taking the freight from the car and placing it on a wagon or platform or in a warehouse. (5)

- (1) *In re Allowances to Elevators by U. P. R. R. Co.*, 12 I. C. C. Rep. 85.
- (2) *Wholesale Fruit and Produce Assn. vs. A. T. & S. F. Ry. Co. et al.*, 14 I. C. C. Rep. 410, 421.
- (3) *Wholesale Fruit and Produce Assn. vs. A. T. & S. F. Ry. Co.*, 14 I. C. C. Rep. 410, 416.
- (4) *Schultz-Hansen Co. vs. S. P. Co.*, 18 I. C. C. R. 234.
- (5) *Schultz-Hansen Co. vs. S. P. Co.*, 18 I. C. C. R. 234.

Loading and unloading of carload freight is usually done by the consignor and consignee, for the idea of carload rates is that the consignor will unload and that freight transported under such rates will not be required to pass through the carrier's freight houses. That this is a proper condition of the use of carload rates is apparent from the fact that the shipper and his experts can better load and unload the goods and, in these days it is in the interest of both railroad and shipper to secure the heaviest possible loading and thereby the most economical movement of the shipment.

- Lighterage & Storage Regulations at New York*, 35 I. C. C. Rep. 47, 60, 61, 62.
- Trap or Ferry Car Service Charges*, 34 I. C. C. Rep. 516, 547.
- Car Spotting Charges*, 34 I. C. C. Rep. 609, 618.
- Western Trunk Line Rules*, 34 I. C. C. Rep. 554, 579.
- New England Coal & Coke Co. vs. N. & W. Ry. Co.*, 33 I. C. C. Rep. 276, 278.
- Dunnage Allowances*, 30 I. C. C. Rep. 538, 543.
- Anderson-Tully Co. vs. M. L. & T. R. R. & S. S. Co.*, 30 I. C. C. Rep. 140, 144.
- Coke Producers' Assn. of Connellsville vs. B. & O. R. R. Co.*, 27 I. C. C. Rep. 125, 129.
- In re Advances in Demurrage Charges*, 25 I. C. C. Rep. 314, 316.

- Western Classification Case, 25 I. C. C. Rep. 442, 443, 608.
 Southwestern Missouri Millers' Club vs. St. L. & S. F. R. R. Co., 26 I. C. C. Rep. 245, 251.
 Galveston Commercial Assn. vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 216, 222.
 Leach vs. N. P. Ry. Co., 25 I. C. C. Rep. 275, 276.
 Bemisch Bros. vs. L. I. R. R. Co., 25 I. C. C. Rep. 439, 440.
 Bagley & Co. vs. P. M. R. R. Co., 25 I. C. C. Rep. 698, 699.
 In re Transportation of Wool, Hides, and Pelts, 23 I. C. C. Rep. 151, 167.
 Schultz-Hansen Co. vs. S. P. Co., 18 I. C. C. Rep. 234, 235, 237, 238, 239.
 Utica Traffic Bureau vs. N. Y. C. & H. R. R. R. Co., 18 I. C. C. Rep. 271, 272, 274.
 Davies vs. L. & N. R. R. Co., 18 I. C. C. Rep. 540, 542, 543.
 Davies vs. I. C. R. R. Co., 17 I. C. C. Rep. 186, 188.
 National Wholesale Lumber Dealers' Assn. vs. A. C. L. R. R. Co., 14 I. C. C. Rep. 154, 160.

See also—

- Milwaukee Pro. & Fruit Exch. vs. C. & N. W. Ry. Co., 35 I. C. C. Rep. 33, 34.
 Blackburn-Warden Co. vs. I. C. R. R. Co., 34 I. C. C. Rep. 58, 59.
 Penna. Paraffine Works vs. P. R. R. Co., 34 I. C. C. Rep. 179, 180.
 McCaa Coal Co. vs. C. & C. Ry. Co., 33 I. C. C. Rep. 128, 132.
 Murphy Bros. vs. N. Y. C. & H. R. R. Co., 33 I. C. C. Rep. 355, 359.
 Tampa Bd. of Tr. vs. A. & V. Ry. Co., 33 I. C. C. Rep. 457, 461.
 Reconsignment & Storage of Lumber, etc., 27 I. C. C. Rep. 451, 456.
 In re Suspension of Western Classification No. 51, 25 I. C. C. Rep. 442, 478, 494.
 California Pole & Piling Co. vs. S. P. Co., 22 I. C. C. Rep. 507, 509.
 Davies vs. I. C. R. R. Co., 19 I. C. C. Rep. 3.
 Ponchatoula Farmers' Assn. vs. I. C. R. R. Co., 19 I. C. C. Rep. 513, 515.
 Enterprise Fuel Co. vs. P. R. R. Co., 16 I. C. C. Rep. 219, 224.
 Hay Exchange Assn. vs. P. R. R. Co., 14 I. C. C. Rep. 178, 182, 185.

§ 2. Loading and Unloading Fruits and Vegetables in Packages at Chicago.

In a case before the Interstate Commerce Commission involving the loading and unloading of fruits and vegetables in packages at Chicago, the Commission said:

"This case shows that where the entire contents of the car are owned by a single consignee it has always been the custom of these defendants in Chicago to bring these packages to the car door and to load into the car such packages when shipped in carloads from Chicago. This case has been argued by the defendants upon the theory that the main controversy was with consignees of granger cars. Such is not the fact. The testimony shows that of all carload shipments to Chicago only about 15 per cent are in consolidated carloads. The great bulk of these shipments are to consignees who own the entire contents of the car. The serious complaint here is that these consignees are now obliged to spend several dollars in the unloading of these carloads for a service formerly performed by the carrier. Hence, with respect to these shipments, it is not true that the rates were made upon the theory that the unloading at Chicago or the reloading at Chicago was to be done by the shipper. It has always been done, until January 1st last, by the carrier, and the rates were established in view of that condition.

"This service can be more economically done by the carriers, as it has been done in the past, than by consignees. On the whole we are of the opinion that where these carload shipments are to a consignee who is the owner of the entire contents of the car, and where therefore delivery is made upon the team tracks of the defendants, they should furnish in the future, as they have in the past, the necessary help to bring these packages to the car door and there make delivery to the consignee, and that the

present rule and regulation of the defendants which requires consignees to take these packages inside the car is unjust and unreasonable.

"The question with respect to these consolidated carloads, the so-called granger cars, is somewhat different. These carloads move under the carload rate, and are entitled to exactly the same treatment which is accorded to other carloads. The carrier would discharge its full duty if it placed such a carload upon its team tracks and brought the packages to the car door for delivery. It is under no obligation to furnish any place for the assorting of these packages and making delivery to the different individuals to whom the carload is addressed. But, in point of fact, the business cannot be carried on unless the packages are assorted and delivered to their respective owners at the tracks of the defendants. The Illinois Central, for this purpose, has provided a fruit platform, which seems to be almost exclusively devoted to business of this character. It is more work to take these packages from the car and assort them upon this platform than it is simply to deliver them at the car door. All this is an additional service, entailing upon the defendants an additional expense for which, in our opinion, a charge may properly be made, in addition to the published rate for transportation. In our opinion 1 cent per 100 pounds would be a reasonable charge for this additional service, and anything in excess of this would be unreasonable. It must be clearly understood that the consignees of these consolidated carloads are entitled to exactly the same treatment accorded to the consignees of other carload shipments if they so desire, that is to say, such a consignee may, if he elects, demand delivery upon the team track and receive the packages at the car door.

"We are also inclined to think that the Illinois Central

may, if it elects, impose a charge for handling these fruits and vegetables through its fruit house when the shipper requires that service. This house is provided to avoid liability of freezing in the delivery of these vegetables. While it may be the duty of the Illinois Central to protect these shipments against damage from cold, it is not required to do this without extra charge."

Wholesale Fruit & Pro. Assn. vs. Atchison, etc., R. Co. et al.,
14 I. C. C. Rep. 410, 419.

§ 3. Package Freight on Team Tracks Should be Loaded or Unloaded by Shipper.

Ordinary package freight, which is loaded and unloaded upon the team track or at the private siding, should be handled into and out of the car by the shipper in the same manner that bulk freight is. The car is placed at the disposal of the shipper, who puts into it whatever he desires. When loaded it is received by the railroad, receipted for as a carload, and the charges are determined by weighing the car and deducting the tare. Fruits and vegetables are usually handled upon a different basis, as already suggested.

Wholesale Fruit & Pro. Assn. vs. Atchison, etc., R. Co. et al.,
17 I. C. C. R. 596, 600.

Utica Traf. Bu. vs. N. Y. C. & H. R. R. Co., 18 I. C. C. R.
271.

See also—

Coml. Club, etc., vs. B. & O. R. R. Co., 19 I. C. C. Rep. 397,
401.

§ 4. Carrier May Lawfully Charge for Loading or Unloading.

It is not unlawful to assess a reasonable charge for loading or unloading, or for assisting in loading or unloading

carload freight, provided the service to be rendered and the charge to be assessed are clearly stated in the tariff.

Schultz-Hansen Co. vs. S. P. Co. et al., 18 I. C. C. R. 234.

The carriers are merely rendering assistance to shippers in making car-door delivery and in receiving freight at the car door.

In re Dunnage Allowances, 30 I. C. C. Rep. 538, 543.

See also—

Five Per Cent Advance Rate Case, 31 I. C. C. Rep. 351.

Same, 32 I. C. C. Rep. 325.

§ 5. Carrier May Unload and Release Its Equipment.

The carrier has the right, after consignee's free time has expired, to unload and release its equipment, and it can not by neglect of consignee to unload his shipment be required to unload same without proper compensation therefor. The rule and the practice must, however, be nondiscriminatory.

Schultz-Hansen Co. vs. S. P. Co. et al., 18 I. C. C. Rep. 234.

§ 6. Jurisdiction of Commission Over Loading and Unloading.

The Commission has jurisdiction of complaints involving the practices and regulations of interstate carriers in respect to loading, unloading and distribution of cars. Section 15 of the act is to be read in the widest possible sense; it brings within the jurisdiction of the Commission all the regulations and practices of carriers under which they offer their services to the shipping public, and conduct their transportation. Any regulation or practice that withdraws from a shipper the equal opportunity of taking advantage of the rates offered by a carrier is a regulation

or practice "affecting rates" within the meaning of that phrase as used in Section 15.

Rail & River Coal Co. vs. B. & O. R. R. Co., 14 I. C. C. R. 86.
(The grounds upon which the Commission took jurisdiction in this case are the same as cover the jurisdiction of the Commission in Wholesale Fruit & Pro. Assn. vs. Atchison, etc., Ry. Co. et al., 14 I. C. C. R. 410, par. 3, 1. 13-15.)
Schultz-Hansen Co. vs. S. P. Co., 18 I. C. C. Rep. 234, 237.
California Coml. Assn. vs. Wells, Fargo & Co., 14 I. C. C. Rep. 422, 425.

See "Interstate Commerce Law"—"Jurisdiction of Commission."

§ 7. Loading and Unloading Rules and Regulations Must be Published in Tariff.

Whenever any service is rendered beyond the ordinary receiving, transporting and delivering of freight, the precise character of that service should appear in the printed schedule. Services rendered by carriers in loading and unloading carload freight and charges for such services are analogous to other terminal services and charges such as demurrage, milling in transit, storage, switching, etc., and the charges for and the precise character of the service must be published in the tariffs.

Schultz-Hansen Co. vs. S. P. Co., 18 I. C. C. R. 234.
California Pole, etc., Co. vs. S. P. Co., 22 I. C. C. Rep. 507, 509.

§ 8. Loading Shed.

In the absence of discrimination the Commission will not require carrier to furnish a car shed under which perishable freight may be loaded without damage from weather.

Ponchatoula Farmers' Assn. vs. I. C. R. R. Co., 19 I. C. C. R. 513, 515.

**§ 9. Unloading Facilities Meeting General Requirements
Need Not be Enlarged on Account Single Shipper.**

Unloading facilities ample to meet general requirements of community need not be enlarged to meet special requirements of single shipper.

Reiter, Curtis & Hill vs. N. Y. S. & W. R. R. Co., 19 I. C. C. R. 290, 292.

**§ 10. Loading and Unloading Rules Passed Upon by
Commission.**

Rule that free unloading will be afforded at warehouse when road has line haul, may not be defeated by misrouting of shipment excluding road from line haul.

Prentiss & Co. vs. P. R. R. Co., 19 I. C. C. R. 68, 69.

Rule is not unreasonable which compels shippers to count packages of perishable freight.

Ponchatoula Farmers' Assn. vs. I. C. R. R. Co., 19 I. C. C. R. 513, 521.

Rule requiring consignee to secure berth for unloading is not unreasonable.

Mosson Co. vs. P. R. R. Co., 19 I. C. C. R. 30.

See also—Specific Sections, *supra*, this chapter.

**§ 11. Cars of Certain Size Must Pay Rates Applicable
Thereto.**

Shippers, who order and use cars of a certain size, must pay rate applicable thereto, though lower rate would have been available by loading in another kind of car; had shipment been delivered to carrier for loading, carrier would have been under duty of loading in manner which would result in application of lowest charge.

Clinton Br. & I. Wks. vs. C. B. & Q. R. R. Co., 20 I. C. C. R. 416, 417.

If consignor loads car that might have been loaded so as to secure lower charge the carrier is not liable.

Consolid. Water Power & Paper Co. vs. S. P. L. A. & S. L. R. R. Co., 20 I. C. C. Rep. 169, 170.

§ 12. Reparation for Loading and Unloading Expense Caused by Carrier's Demand of Excessive Rate.

Damages were awarded for expenditure incurred in unloading and reloading part of car, due to carrier's unlawful act in refusing to deliver carload until excessive rate was paid.

Schultz & Co. vs. C. M. & St. P. Ry. Co., 20 I. C. C. R. 403, 405.

§ 13. Loading Long and Bulky Articles.

Long and bulky articles should be transported in box cars in every case where it is possible to do so, and when so transported they should be charged regular rates for less-than-carload shipments. When shipment, solely because of its length or bulk, is actually transported on an open car, the rule applying a higher rate and minimum may be enforced.

Merchants & Mfrs. Assn. of Baltimore, etc., vs. A. C. L. R. R. Co., 22 I. C. C. R. 467, 470.

Parlin & Orendorff Co. vs. I. C. R. R. Co., 34 I. C. C. Rep. 90, 92.

Trapor Ferry Car Service Charges, 34 I. C. C. Rep. 516, 523.

In an investigation into the reasonableness of the application of Rule 7-B and C of Official Classification No. 42; Rule 26, Section 3, of Southern Classification No. 50, restated as Rule 20-B in Western Classification No. 53, relating to minimum charges on articles too long or too bulky to be loaded through the side doors of box cars; the Commission held that carriers should restate said rules embodying the following provisions: Unless otherwise

provided, a shipment containing articles the dimensions of which do not permit loading through the center side doorway 6 feet wide by 7 feet 6 inches high without the use of end door or window in a closed car not more than 36 feet in length by 8 feet 6 inches wide and 8 feet high shall be charged at actual weight and authorized rating subject to a minimum charge of 4,000 pounds at the first-class rate for the entire shipment.

§ 14. Charge for Readjustment of Load in Transit Must be Provided for in Tariff.

Any charge by carrier for readjusting load of piling or poles, made necessary by shifting, improper loading or heavy grades, must be provided for by proper tariff rule.

Calif. Pole & Piling Co. vs. S. P. Co., 22 I. C. C. R. 507, 509.

§ 15. M. C. B. Rules Governing Loading of 60-Foot Steel Rails on Twin Cars.

Under the rules of the Master Car Builders' Association 60-foot steel rails, when loaded on twin cars, should not be loaded to greater weight than 75 per cent of marked capacity of cars. If initial carrier publishes its minima rules in accordance with these regulations, such minima govern through to destination.

Cambria Steel Co. vs. G. N. Ry. Co., 12 I. C. C. R. 466.

§ 16. Light Loading of New Cars on Initial Trip.

Carriers' mechanical departments have rules against loading to its full capacity a new car on its first trip. This rule is understood to generally provide that such car shall not on its first trip be loaded to more than 75 per cent of its capacity. The Commission was requested to pass upon

the question of conflict in the tariff minimum and the mechanical department's rule. The Commission ruled:

"All new cars are now of much greater capacity than those of a few years ago, and carload minima have also been increased. The number of commodities that are shipped in closed cars and that ordinarily are loaded to the full capacity of the car are comparatively few. Except in times of actual car shortage there would seem to be but little difficulty in selecting for such new cars loading that would bring no conflict between the tariff and the mechanical department's rule. The tariff rule is the one which the carrier is by law obligated to observe and maintain. It is not possible to authorize setting aside the tariff requirement without creating or making possible discriminations. There is no objection to incorporating in the tariff a rule that the minimum weight applicable to a new car on its first loading shall be a certain percentage of its capacity or of the minimum fixed in the tariff. We adhere to the view that the rule governing minimum weight shall be contained in a lawful tariff and that it must be applied and observed."

Rule No. 66, Tariff Circular No. 18-A, par. 10.

§ 17. "Visible Capacity" of Car in Loading.

While it is quite comprehensible in understanding the meaning of loading a box car to its visible capacity, the application of such a rule to the loading of flat or gondola cars is not so clear. The "visible capacity" load of any car depends largely upon the nature of the commodity with which it is loaded. A reasonable rule for the loading of lumber, timber, poles or piling on flat or in gondola cars is that they shall be loaded compactly to a height of 13 feet above the rail and to within 90 per cent of the

length and width of the floor space of the car. If the rule provides for visible capacity loading, actual weight should govern, unless estimated weights are provided for in the tariffs. A "visible capacity" loading rule must be definitely and specifically provided for in the carrier's tariffs.

See—Oregon Lbr. Co. vs. O. R. & N. Co. et al., 19 I. C. C. Rep. 582, 583.

CHAPTER VII.

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CHAPTER VII.

THE SWITCHING SERVICE.

§ 1. Terminal Switching.

“Switching” is a term applied to the placement of cars for intended use. It is a service that is secondary, but necessary, to the transportation service, and consists of the moving of a car, loaded or empty, from track to track by means of either road or special switching engines. In the most modern terminals, such as the Bush Terminal in New York and the New York Central and Pennsylvania Terminals in that city, electric locomotives are used to perform switching service.

Terminal switching embraces all switching movements of cars within the limits of terminals necessary for the proper handling of cars in pulling and setting for loading and unloading purposes, either at freight houses, platforms, public team tracks, or industrial sidings and switches, making up and breaking trains, and the interchange of cars through terminals for movement to points beyond. A switching service is employed in bringing cars to assembling yards, the working of cars into train order, for out-going trains, and the breaking up of incoming trains and the distribution of the cars to the freight houses, team tracks, industrial sidings, or to interchange and transfer with other lines.

The switching service necessary to place and pick up loaded or empty cars at local points, while not terminal switching, in the general sense in which that term is used,

is of a similar nature but on an infinitely smaller scale. At those points of sufficient size and importance local switching is performed by special switching engines provided for that purpose, but at unimportant local points the local switching must be performed by the road engine performing the local freight train service at such point. Because of this local switching work the schedule of local freight trains is extremely slow and uncertain.

Ordinarily rates apply to or from all industries, freight depots, warehouses, elevators, team tracks and shipping facilities located within the defined switching district at terminals. A common rule is that the line which brings traffic to or takes traffic from a terminal district stands or absorbs the switching charge of the connecting line or terminal company for delivering to or receiving the traffic from industries, warehouses, etc., unless the revenue from the traffic is less than a certain fixed sum per car. This minimum revenue per car varies in different terminals. In the Chicago switching district, for example, it is fixed at \$15.00 per car. Using the minimum revenue as \$15.00, it means that if the road haul revenue is \$15.00 or less no switching charge will be absorbed by the line haul road, but shipper or consignee must pay any switching charge that accrues; if the road haul revenue is in excess of \$15.00 the switching charge will be absorbed to an extent that will still leave a minimum revenue of \$15.00.

Example: Road haul revenue \$20.00, switching charge \$3.00, this switching charge would all be absorbed leaving a road haul net revenue of \$17.00. If the road haul revenue is only \$17.50 and switching charge \$3.00, \$2.50 of the switching charge would be absorbed, leaving the road haul net revenue still \$15.00.

No charge is generally made for switching an empty car to an industrial or public team track for loading, nor

for removing an empty car from a public team track or industrial siding after unloading.

There are, however, places where a separate charge is made for the empty car haul, even though it may have had a loaded haul in the opposite direction. This is particularly true in some places where an intermediate line is used and where separate charges are made for loaded and empty hauls, the empty haul rate usually being one-half the rates charged for the loaded haul.

Bonded freight, because of the necessity of allowing inspection by the custom house inspectors, if switched for that purpose, is generally subjected to an additional charge of \$2.00 per car, although there are places where no extra charge is made.

Carload shipments, when moving within a territory, where deliveries are not provided for under the rates and no switching tariff is in effect, must pay distance tariff rates.

§ 2. Important Terminals.

Important terminals, comprising assembling and classification yards, stock facilities, elevators, warehouses, freight and passenger depots, storage, team, industrial, connecting and interchange tracks, are maintained by the carriers at all of the principal cities and commercial centers in the United States. In cities like Chicago, New York, Boston, Philadelphia, Pittsburgh, Baltimore, Buffalo, Cleveland, St. Louis, Kansas City, Minneapolis, St. Paul, San Francisco, Duluth, Cincinnati and other important traffic centers, these terminals are operated through subsidiary companies known as terminal or belt railroads or associations, each line entering such points owning a pro rata share in the subsidiary company.

These modern terminals have resulted from the evolu-

tion of the commercial development of these cities. Originally, when several railroads entered a trade center, a belt road was built connecting these different lines. These belt lines circled the city or business district and performed a switching service. As the city grew in size, the belt line was either extended or another or larger belt was built, and as the movement of cars over these belt lines largely increased the efficiency of carload transportation, industries sought this advantage by locating their factories along the line of such belt roads. So extensive became this practice that the belt railroad began to perform a service more important and expensive than merely switching cars between connecting lines. The old switching charge was not sufficient to meet the expense of this new terminal service with the increase in size of equipment and the larger tonnage per car, and the present basis of charge for terminal service in the movement of loaded cars is a tonnage charge.

Terminals, in the sense last mentioned, may be divided into three general classes, viz., terminals where the receipt, interchange and delivery of cars is performed by an all-rail service, such as the large inland cities, terminals where the receipt, interchange and delivery of cars is performed by a part-rail and part-water service, such as San Francisco, New Orleans, New York, etc., and terminals specially designed for the receipt, delivery and interchange of special commodities, such as coal, ore, etc., as in the case of transfers from rail to boat, or vice versa, of coal and ore at Great Lake ports, of barge coal on the Ohio River, and the dumping of coal direct from the cars into ocean-going vessels.

(1) **Chicago Terminal.** The Chicago terminal switching district comprises the following described territory:

Commencing at a point directly east of Clarke Junction,

Ind., on the shore of Lake Michigan, thence southwestwardly through Calumet, Ind., to Grassile, Ind., inclusive; thence via the Indiana Harbor Belt Railway and C. I. & S. Railway to and including Osborn, Ind.; thence via the N. Y. C. & St. L. Railway to Hammond, Ind., inclusive; thence south of the Michigan Central Railway to Liberty, Ill., inclusive; thence on and via the Indiana Harbor Belt Railway to Dolton, Ill.; thence southwest to and including Harvey, Ill.; thence northwest through Blue Island, Ill., inclusive, on and via the Indiana Harbor Belt Railway through Chicago Ridge, Argo and McCook to La Grange, Ill., inclusive; thence north through Broadview, Bellewood, Proviso and Melrose Park to Franklin Park, Ill., inclusive; thence on and via the M. St. P. and S. S. M. Railway to Desplaines, Ill., inclusive; thence southeast on and via the C. & N. W. Railway to Chicago city limits; thence east along the Chicago city limits to Lake Michigan, including Weber and Glenwood Ave. stations on the Mayfair cut-off of the C. & N. W. Railway.

§ 3. Terminal Associations and Belt Railroads.

Originally belt and terminal railroads were operated by separate companies, but of late years, because of lack of pecuniary success and their intimate relationship to the lines of railway served by them, their ownership has become absorbed by these system lines, generally upon a subsidiary plan of pro rata stock holdings. An accurate insight into the formation, development, abuses and benefits of these belt and terminal companies may be had from the history of the St. Louis Terminal Railroad Association in its lengthy litigation with the city of St. Louis.

§ 4. Interline Switching.

Interline switching is the switching of loaded cars from an industry, warehouse, elevator or factory, located upon

a private track, to a connecting line at a junction point, or from a connecting railroad at a junction point to any industry, warehouse, elevator or factory, located upon a private track, providing the point from and the point to which the car is switched is within the limits of the terminal or switching district, and the traffic in the car is either destined to or originates at a point within such district. It is commonly termed connecting line switching, and is, in a broad sense, the switching of cars between connecting lines, as the term "interline" suggests.

The law has recognized the importance and necessity of interline switching, and the Act to Regulate Commerce has a provision in it to the effect that upon application of any lateral branch line of railroad, or of any shipper tendering interstate traffic for transportation, any common carrier subject to the act shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same.

Act to Reg. Com. (Amd. 1910), Sect. 1, par. 7.

The act further provides that every common carrier subject to its provisions shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines, but this shall not be construed as requiring any such common car-

rier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Act to Reg. Com. (Amd. 1910), Sect. 3, par. 2.

§ 5. Industrial Switching.

An important switching service is performed by the carriers, or belt and terminal railroads, known as "industrial switching." Industrial switching consists in the movement of a loaded car from an industry, warehouse, elevator, or factory, located upon a private track, when the points of origin and destination of the traffic are both within the limits of such switching district.

In the Chicago Switching District, the following charges are imposed for industrial switching:

Maximum Industrial charge between two Industries located on the same road one and one-half ($1\frac{1}{2}$) cents per cwt., minimum weight 60,000 pounds per car.

Between an Industry on one railroad and an Industry on another railroad, the entire charge not to exceed one and one-half ($1\frac{1}{2}$) cents per cwt., minimum weight 60,000 pounds.

Where three or more roads are required, the intermediate line's or lines' charge not to exceed one and one-half ($1\frac{1}{2}$) cents per cwt., minimum weight 60,000 pounds for each intermediate line. These charges, however, do not apply to grain, coal or coke, there being no charge in rates for the switching of grain.

(1) "Yard" and "Industrial Switching" Defined. "Yard Switching" is defined to be "the movement of a loaded car from any spur, siding, or track in a yard of a carrier to another spur, siding, or track in the same yard," and industrial switching to be "the movement of a loaded car from any spur, track, junction, yard, or terminal of a car-

rier to any spur, track, junction, yard or terminal of the same carrier."

Baltimore Switching Charges, 32 I. C. C. Rep. 376, 377.

Pub. Ser. Com. vs. N. C. Ry. Co., 122 Md. 355.

Switching Charges at Milwaukee, Wis., 32 I. C. C. Rep. 509, 511, 512.

§ 6. The Switching Service as Affected by Transfers.

Charges for switching carload traffic may be affected by transfers, as in a case where a single carload is transferred in transit into two cars. Switching charges should be assessed as for one car shipment where a single carload is transferred in transit into two cars.

The granting of free transfer service to the private tracks of some consignees and refusing it to other consignees similarly situated is held to be an unjust discrimination.

Kay & Co. vs. D. & R. G. R. R. Co., 21 I. C. C. R. 239.

Pelee Co. vs. N. Y. C. & H. R. R. Co., 19 I. C. C. R. 579, 581.

See also—

I. C. C. Confr. Rulings Bull. No. 6, Rulings Nos. 250a, 273, 274, 331, 339, 357.

§ 7. The Switching Service as Affected by Reconsignments.

Cars may be reconsigned to points within and without the limits of a switching district, but if this service is performed after the car has been placed on the delivery or team track of the carrier over whose line the car has moved, a charge of \$2.00 per car is usually made in addition to whatever switching charge there may apply, except that it is not customary to make any switching charge for placing a car on a public team track. If the car is placed for partly unloading or for completion of load and

then reconsigned to another destination, a charge of \$5.00 per car is usually made. If the customary 48 hours elapses before such reconsignment, the regular demurrage and car service charges attach in addition to the reconsignment charge. In some instances but 24 hours are allowed.

See also—Chap. VIII, this volume, "Reconsignment Service and Rules Governing Same."

§ 8. The Switching Service as Affected by Deliveries to Private Tracks.

When cars are loaded at or shipped from private industrial tracks they must be moved to or from the track of the carrier over whose line such cars are to be or have been moved. This movement requires a switching service. Within switching districts where such private tracks are usually of short length and connect directly with the side-tracks, spur tracks, or yard tracks of the carrier, and a regular switching service in the way of switch engines and crews are maintained, it is not customary to make any charge against the shipper for such switching service. Neither is it customary to make any charge for the switching and placing of cars on spur or private side-tracks at local points, even though such switching service must be performed by the regular road engine engaged in hauling the local freight train.

The manner in which the expense of construction and the ownership of industrial or private switches or side-tracks is arranged between the shipper and the carrier very often fixes the method and extent of charging for the switching service to or from such switches or private side-tracks.

However, where industrial plants or factories are located at considerable distance from the line of the carrier and are connected by long sidings, spur tracks, or private

industrial tracks, a moderate charge per car is imposed by the carrier performing this extra switching service necessitated by the placing of cars at such distant plants.

See also—"Plant Facilities."

§ 9. The Switching Service as Affected by Trackage Agreements and Rights.

Carriers are permitted by law to enter into contracts and agreements governing the use of their tracks by other carriers. Thus, trackage rights are acquired by a switching company or by a connecting carrier over certain portions of a carrier's line for the purpose of effecting a particular switching service at an economy of cost and time.

A connecting track between two carriers at a junction point may be owned by either of the carriers and used by either carrier for the transfer of carload shipments. This transfer service is performed by such connecting carriers without charge to the shipper as a part of the through transportation service, if such traffic be destined to a point beyond such transfer.

A carrier may bring a car to a destination point consigned to a consignee located on the tracks of another carrier. The delivering carrier will charge the hauling carrier for its switching service in taking such car to its destination on its own line. The hauling road, therefore, would collect from the shipper or receiver of the car a charge to cover such switching service in addition to the regular rate, or absorb such switching charge.

§ 10. The Switching Service as Affected by Reciprocal Switching.

In other instances the carriers at a common point enter into an arrangement for reciprocal switching. Each road switches cars for the other without making any charge

therefor, as the service practically equalizes in time. In such a case, the rate paid by the shipper applies to the consignee's factory whether located on the hauling road or on the line of another carrier.

The converse of this situation occurs when traffic comes from a point common to two competing lines of railroad and is destined to a plant delivery on the line of the carrier not having the road haul. If the competition between the carriers be at all keen, the delivering carrier will impose full local distance rates for its service, the obvious intent, of course, being to coerce the routing of the traffic via its own line from the common point.

Whether a carrier could be compelled to establish reciprocal switching arrangements was not decided by the Commission, but having entered into such arrangement, under tariff authority, the carrier must accept shipments for delivery to the extent of its capacity.

Crescent Coal & Mining Co. vs. B. & O. R. R. Co., 20 I. C. C. R. 559, 565.

See also—Chap. VI, this volume, Sect. 26, "Reciprocal Switching."

See also—Chap. VI, this volume, Sect. 25, "Reciprocal Switching."

§ 11. The Switching Service as Affected by Yard, Spur, and Side Tracks.

The efficiency of the switching service at any important point or terminal is dependent upon the track facilities provided. Unless there be sufficient yard tracks, in the way of adequate classification tracks, "hold" and storage tracks, side tracks, and spur tracks, congestion is inevitable with its consequent expensive delays, and the prompt placing of cars on private tracks is interfered with.

The logical presumption is that the switching service

increases as the number of yard, spur, and side tracks are increased, and in a numerical sense this would be true, because each spur, yard, or side track might reasonably mean an extra switching service. But so far as the cost of the switching service is concerned, this condition is not true. Once a car is in the possession of a switching crew it is of secondary significance how far it is moved in that particular switching movement. The length of the switching-haul, while a factor of cost to the carrier, is not the predominating one, since it does not to any marked degree multiply the switching charge. Hence, track arrangement cannot be said to control switching cost to the carrier.

The terms "yard track," "spur track," and "side track" are frequently made careless use of in connection with switching descriptions.

The term "side track" is ill-advisedly used to denote anything but a track of considerable length running alongside the main track and used as a passing track for trains moving in opposite directions on a single main line or the passing of trains of superior and inferior class in the same direction.

The proper name to apply to tracks connecting industrial plants, mills, factories, mines, etc., with the tracks of a railroad is "industrial tracks." They are commonly referred to as "switches," and while they may be termed "switch" or "switching" tracks, they should not be called "switches" because of the possible confusion with the "switch." which, technically speaking, turns cars or trains onto or from a given track.

§ 12. The Switching Service as Affected by Team Tracks.

A team track is a public track alongside of which a team or truck may be driven for the purpose of loading freight

into or unloading it from cars placed thereon. Team track loading and delivery is confined almost entirely to carload shipping. It is customary for the carriers to make delivery of carload shipments to consignees having no private spur tracks upon public team tracks, while package freight is usually delivered and received through the freight house. Less than carload shipments of a prescribed minimum weight, and "bulked" package shipments of an aggregate minimum weight, may be loaded or unloaded on public team tracks.

No switching charge is made for placing cars on public team tracks for loading or unloading. A railroad should provide a place for loading and unloading carload freight and unless they provide for this service through their freight house, the public team track is their place of receipt and delivery, and they could not lawfully provide a separate charge for placing cars thereon for that purpose.

A team track is analogous to a freight depot in that it bears the same relation to carload freight that the freight depot does to less-than-carload shipments.

R. R. Com. of Arkansas vs. S. L. I. M. & S. Ry. Co., 24 I. C. C. Rep. 292, 294.

§ 13. The Switching Service as Affected by Trap or Ferry Car Service.

Cars are sometimes switched back and forth between the private spur track of a shipper and the carrier's freight house with less-than-carload shipments. A trap or ferry car is loaded with one or more less-than-carload shipments at points on private or assigned sidings for distribution at the railway freight house or transfer point into regular package or other cars for forwarding. The practice is in aid of the concentration of merchandise freight for fast through service, but at first did not find much favor in the

eyes of the Commission. This practice is known as "trap car" or "ferry car" service, and is in some instances charged for and in some cases not. In discussing this service the Commission has said:

"Trap-car service came to be generally rendered without separate or specific charges in the territory involved from several causes. In cases where there was no land available for the location of an industry near to freight stations in congested sections of cities, the assurance of trap-car service made it practicable for the industry to locate in an outlying district some distance from freight stations. Competition played its part in the establishment and maintenance of the service. An industry located near a freight station of road A was served by a side track connection of road B, which had no freight station in the vicinity. By trap-car service road B was enabled to compete with road A for less-than-carload traffic, which otherwise would all have been drayed to road A. It was a natural step from loading and unloading carload shipments on an industry siding to loading and unloading less-than-carload shipments on the same siding. It was early demonstrated that one of the effects of the service was to relieve congested main freight stations and to make unnecessary the cost of additional freight terminals. The service was also a benefit to the industry or commercial house using it.

"For many years previous to the passage of the Hepburn act, in 1906, trap-car service had been rendered by respondents. The character of the service was not uniform, nor did it extend to all points. In some cases it was performed without separate or specific charge, and in other cases charges were made comparable with local switching charges for movements of carload shipments. The filing of tariffs providing for trap-car service began in 1906 and 1907. These tariffs only covered the service

where it already existed. There was, consequently, the same lack of uniformity in the tariffs that had prevailed for years without tariffs. October 12, 1908, the Commission, in ruling 97, Conference Rulings Bulletin No. 6, issued the following ruling:

“The Commission condemns as unlawful a practice under which a carrier provides an empty car at factory sidings in which the shipper may load less-than-carload shipments which the carrier then moves to its regular freight station, where the shipments are assorted and placed in other cars to be forwarded to their respective destinations. Such a practice is lawful only under definite and clear tariff authority, nondiscriminatory in terms and in its application.’

“Thereafter tariffs were filed which contained rules with respect to this service. This proceeding has disclosed that the tariffs of some of the carriers are still ambiguous, and that taken as a whole they are not uniform with respect to the service to be performed. In most of them minimum weights are named, to which cars must be loaded if the service is to be rendered without separate or additional charge. If the prescribed minima are not loaded, charges, usually on a per car basis, are named.

“The amount of the service rendered by different carriers, or by the same carrier at different points, varies greatly, dependent upon the conditions. At one terminal the average haul is much greater than at another; and at a given terminal trap-car service may involve movements over belt or other terminal lines, with switching absorptions, while at another the service may be performed by line-haul carriers with no absorptions. The service is not confined to large cities, with many and varied industries, but is rendered at all points, large or small, where there is an industry or commercial house with a private side track and sufficient less-than-carload tonnage to load the

prescribed minimum. The service is rendered for an industry which ships 2 or 3 cars per week, as well as for one which ships 40 or 50 cars per day. Through arrangements with carriers, many shippers, at a considerable expense, have erected great operating plants, and movements of cars about them are by means of the shippers' own engines or motors. The carrier serving the industry has but to shove the cars on the tracks of the industry and pull them off after they are loaded. Instances of this kind are the General Electric Company, at Schenectady, N. Y.; Larkin & Company, at Buffalo, N. Y.; and Procter & Gamble Company, at Cincinnati, Ohio. During the month of September, 1914, Larkin & Company shipped 865 trap cars outbound from its Buffalo plant. The General Electric Company, in normal times, ships outbound 900 trap cars per month and receives the same number inbound. Procter & Gamble ship outbound and inbound 4,200 cars per year; Liggett & Myers, at St. Louis, Mo., ship outbound and inbound 8,400 cars or more yearly, and Montgomery Ward & Company, from their two Chicago plants, shipped outbound during the month of February, 1915, 1,582 cars. These are examples of the extent to which the service is used by the larger individual shippers. There are numerous industries scattered all over the territory from which are shipped from 2 to 10 cars per day. The Pennsylvania lines east of Pittsburgh and Buffalo handle 138,000 trap cars yearly, and the New York Central lines east of Buffalo, 60,000.

"The movement of inbound trap cars is much less than the outbound. For example, at 22 points on the Pennsylvania Railroad during the week from July 12 to 18, 1914, 1,338 trap cars moved outbound and 479 inbound. There are numerous industries, however, which have larger inbound than outbound movements; many other

industries receive all their traffic inbound in carloads and ship all traffic outbound in less than carloads. The largest users of the service, as a rule, have comparatively little inbound traffic. In the aggregate, however, the inbound movement is large.

"It has been the practice of the respondents to establish at selected points on their lines what are known as transfer stations for handling and distribution of less-than-carload shipments, which are usually not operated in connection with their regular freight stations. One object of a transfer station is to enable the carrier to transport a car loaded with less-than-carload freight as far as possible on the way to destinations. Another is to avoid congestion at regular freight stations. Transfer stations are generally located either in the vicinity of large cities or at junction points with important connections. In handling trap cars containing mixed less-than-carload shipments from private sidings the question whether the car shall be carried to a local freight station or to a transfer point is determined by conditions. One test is whether the transfer station is equally available from a transportation standpoint, and another, whether the shipments loaded in the car are consigned to destinations which make them subject to more economical handling at the transfer point than at the local station. Instances are numerous where shippers at request of the respondents load cars so that they may move to outlying transfer points both as a matter of economical railroad operation and expeditious movement of the shipments.

"In large cities carriers have established at convenient points within their switching limits freight substations for the convenience of the public. Most of these stations are of limited capacity and have only one or two men to handle shipments. In Chicago there are more than 200 such

stations, and the Pennsylvania Railroad has 40 in Philadelphia. From these stations less-than-carload shipments are transported in what may be called railroad trap cars to main freight stations, or transfer stations, for re-handling and forwarding of contents. The service with respect to these cars is comparable with trap-car service rendered to an industry. The service thus rendered in connection with substations, dependent upon their location, may, and often does, cost the carrier more than the service rendered to industries.

"The original trap car was one used to transport less-than-carload shipments from industries and commercial houses to local freight stations for rehandling and forwarding of contents. The service has grown until it now includes movements of cars from local stations to private side tracks, and between private side tracks and transfer stations, either local or at distant points on or off the line of the carrier serving the industry, and movements from and to distant gateways. In many of the schedules under suspension it is proposed to subject to charges cars loaded at an industry and shipped through to destination, under shippers' seals, without the contents being rehandled by any carrier en route. It is proposed to expand the service to include a car which, by an arrangement with the carrier, is loaded with shipments by the shipper for deliveries in station order and is placed in a road train and moved in the same manner as cars similarly loaded by the carrier at its local freight station. In Official and Western classifications are rules which require shippers to load and unload less-than-carload shipments of heavy and bulky commodities which can not be readily handled by station employees, or at stations where loading or unloading facilities are not sufficient for handling. It is proposed, in many of the schedules under investigation, to apply

charges to cars loaded with such commodities. Many commodities are not provided with carload ratings in the Official Classification, but move under what are called 'any-quantity' ratings. Among these commodities are cheese, butter, eggs, poultry, leaf tobacco in bulk, cotton, cotton piece goods, boots and shoes. Cheese loads heavily and moves in considerable quantities. Carloads of this commodity often exceed 50,000 pounds in weight. Traffic moving under any-quantity rates, but in carloads, has the distinguishing feature of having less-than-carload rates, and the proposed charges in many schedules apply to this traffic, even though transported in cars loaded to cubic capacity.

"The extra expense to which the carrier is put by reason of a trap car which is moved from an industry to a local or transfer station, as compared with shipments which are drayed to the same station, is the switching, the per diem, and absorptions of switching charges, if any. The record does not show definitely the percentage of trap cars that are rehandled at local stations. In trunk line territory the Erie estimates that 50 per cent of its trap cars move to transfer stations; the Baltimore & Ohio, 35 per cent; the Philadelphia & Reading, 75 per cent; the Lehigh Valley, 75 per cent; the Pennsylvania Railroad, 50 per cent; and the Lackawanna, over 50 per cent. No estimates were made by carriers in other parts of the country, but the evidence of shippers leads to the conclusion that, taking the territory as a whole, about 70 per cent of the contents of trap cars are not rehandled at main freight stations. It does not appear what per cent of less-than-carload traffic is not rehandled at other freight stations or at transfer stations situated within the terminals.

"From numerous points commodities are shipped which require blocking in cars to insure safe transportation.

Where such commodities are loaded in trap cars the shipper does the blocking at an expense of from 75 cents to \$4 per car. Other cars require cleaning and lining with paper or other material in order that the shipments may be transported without damage. In the use of the trap car the labor to make the car suitable is provided by the shipper and the material is furnished by him.

"Many shippers testified that if the proposed charges become effective they will resort to drayage of their less-than-carload shipments. Amongst these were some of the larger users of the service as well as many who ship comparatively small quantities in trap cars. It would cost many shippers less to use the dray than to pay the charges proposed. Many others, both large and small trap-car users, would probably continue the service. In but very few cities, with respect to which evidence was submitted, are freight station facilities adequate to handle the less-than-carload traffic that would be offered in normal times if any considerable portion of that moved in trap cars should be sent to stations by dray. Facilities have not been built to care for it, and facilities adequate for the purpose in many cities can not now be furnished without the expenditure by carriers of large sums of money. Deliveries to local stations by dray are usually made in the afternoon of each day, and at all points station facilities are taxed to their utmost from 2 to 5 o'clock. Trap-car freight usually reaches the station in the night and may then be handled by station forces outside the rush period.

"Traffic carried by trap-car service is earnestly solicited by carriers everywhere. They frequently provide, with respect to carload traffic, that if net earnings are \$10 per car or more switching charges of connecting lines will be absorbed. The Lowrey tariff, which governs in Chi-

cago, provides for earnings of \$15 per car before switching charges will be absorbed. In trunk line territory the prevailing minimum weight prescribed for trap cars is 5,000 pounds; in Central Freight Association territory, 8,000 to 10,000 pounds; and in the territory west of the Mississippi River, 6,000. The record in this case shows that the average minimum earnings on trap cars is greatly in excess of \$15 per car.

"Trap-car service is of advantage to its users because it saves drayage of less-than-carload shipments; it permits the loading of both carload and less-than-carload shipments from the same warehouse and also enables the user to load or unload commodities in bad weather without damage to them; it permits the location of an industry or warehouse at some distance from freight stations where land is comparatively cheap; and it obviates rough handling of commodities incident to drayage. The service is also of benefit to the carrier. It relieves very materially the receiving side of outbound freight stations in rush hours; in case trap cars move to transfer points, the carrier is ordinarily saved one handling of the contents; where the shipper loads in station order, or loads shipments to one destination to form the nucleus for an outbound car from the local station, or receives and ships a carload at any-quantity rates, the carrier is relieved from all handling at local or transfer stations; and it enables the carriers to handle the business without the expenditure of large sums of money to build, equip, and maintain adequate freight terminals.

"The evidence shows that carriers throughout the territory have actively solicited shippers to use both inbound and outbound trap-car service in order that congestion at local freight stations might be relieved. Industrial agents

of respondents have induced industries to move from one location to another, and often from one city to another, under assurance that trap-car service without additional charge would be furnished. Shippers produced at the hearings written contracts signed by officials of carriers in which it was set out that they would have trap-car, as well as terminal service with respect to carload shipments, without separate additional charge. It is not to be inferred that these contracts are controlling in a consideration of what would be just and reasonable charges or rules governing the service. Many of the respondents admitted that they had assured shippers that trap-car service would be rendered without additional charge. Under these assurances shippers have constructed their factories and warehouses with appliances and platforms to use in the service. Numerous instances are shown in evidence where shippers have sought to abandon the use of trap cars, but at the earnest solicitation of respondents' representatives they have continued their use. As compared with drays, trap cars, the contents of which are rehandled at local stations, furnish a delayed service. Cars are usually placed on sidings early in the day and are removed therefrom late that day or in the night. If shipments are drayed, they ordinarily go outbound from the station the same day. The contents of the trap car, if sent to the local station, usually do not go outbound from that station until the next day, which results in a delay of 24 hours. The desire of the shipper is to have his shipments move out the day the order is received. The exigencies of business as now conducted from a competitive standpoint make desirable the utmost expedition in the movement of less-than-carload shipments. Shippers who have private sidings and use trap-car service now dray much of their

less-than-carload freight because of the necessity for expedition. Large users of trap-car service are, therefore, in many instances, also extensive users of drays.

"Trap-car service is not confined to shipments of the kind ordinarily described as package or merchandise freight. Heavy iron plates, iron machines, heavy rolls of cable wire, iron drums, radiators and boilers, and other heavy articles move constantly in less than carloads by means of trap cars. Shipments of the character named are confined usually to one such article, but may consist of several. The ordinary trap car, however, contains numerous shipments made up of a number of packages. It is common for a trap car loaded with miscellaneous shipments to contain more than 250 packages. The average trap car contains loading in excess of 15,000 pounds. There are cars which move with loading of 10,000 pounds or less, and there are cars which carry in excess of 40,000 pounds. By cooperation between shippers and carriers trap cars move at a minimum of expense. In case cars move through to destinations or to distant transfer points, the billing is based on shippers' load and count.

"The average cost of handling less-than-carload shipments through freight houses is 40 cents per ton, whether brought there by trap cars or drays.

"A large proportion of less-than-carload shipments is loaded into cars that come upon the industry siding with inbound carload shipments. The Pennsylvania Railroad Company estimates that 50 per cent of all outbound trap cars on its system are not switched independently to the industry, but are loaded into cars which have moved unbound under load. What the proportion is for the whole territory does not clearly appear. With different shippers the range is from 15 to 100 per cent. Where the shipper

uses for less-than-carload outbound shipments a car which came in under load the carrier is saved one switch movement.

"None of the schedules of carriers serving New England territory is involved. No tariffs have been filed by New England carriers which propose changes in existing charges or regulations as applied to trap-car service. The tariffs of carriers serving New England provide charges for trap-car service and contain regulations under which the service will be rendered without separate additional charge. Some carriers in this territory in 1909 filed tariffs naming charges for the service. The charges became effective on all lines in 1912. The general rule in New England is that cars containing 6,000 pounds or more of less-than-carload shipments will be transported free from an industry on a private siding, provided the contents are for one destination or do not require rehandling until an established transfer station is reached. Where the contents of a car are rehandled at a local station, a charge of 1 cent per 100 pounds, minimum \$2 per car, is made.

"The advent of great mail-order houses and the growing desire of consumers to buy direct from producers has enormously increased less-than-carload shipments in recent years. The service, begun in a small way, has developed until the movement of less-than-carload shipments by this means is of great magnitude, and with respect to which commercial and transportation interests of the country are vitally interested."

Thus it will be seen the trap or ferry car service has become an organized and definite part of the railroad transportation system of the country; that its efficiency should not be impaired, and it is not a free service, but

must be provided for by proper publication in carriers' tariffs and strict observance thereof had at all times.

Trap or Ferry Car Service Charges, 34 I. C. C. Rep. 516, 519, 520, 523, 525, 526, 527, 531, 538, 541, 547, 548.

See also—

Richmond Chamber of Commerce vs. S. A. L. Ry. Co., 30 I. C. C. Rep. 552, 554.

In re Trap Car Charges, — Okla. Com. Repts. —.

See also—

G. N. Pierce Co. vs. N. Y. C. & H. R. R. R. Co., 19 I. C. C. R. 579, 581, holding it to be a discrimination where tariff of carrier extended trap-car service to specifically named consignees and consignors.

§ 14. The Switching Service as Affected by Terminal Facilities.

It has become essential to the proper operation of a railroad in the fulfillment of its duties as a carrier that adequate terminal facilities are maintained to afford convenient deliveries according to the nature of the traffic and the situation of the shippers and receivers of freight. These terminal facilities should consist of proper receiving and despatching yards, classification yards, storage yards, adequate main and side tracks for safe operation of trains, special tracks for special commodities, public team tracks for the receipt and delivery of carload and bulk freight, warehouses, elevators, cold storage facilities, cooling and ventilating facilities, docks, wharves, or piers, and adequate motive power for the operation of these facilities.

From the billing instructions or guides of carriers and fast freight lines, information may be had as to the general condition of terminal facilities for effecting desired deliveries, but much has to be accomplished in the way of cooperation between the carrier and the shipper in order

to bring about anything like ideal terminal conditions at our larger cities.

§ 15. The Switching Service as Affected by Tunnel Service (at Chicago).

The Lowrey tariffs provide for the application of Chicago rates from and to 2,249 industries named therein, including those served by the tunnel company and the lighterage company, and also from and to some 220 freight depots, within the Chicago switching district.

The Chicago Tunnel Company, an Illinois corporation, acquired, at receiver's sale, the property of the Illinois Tunnel Company, which constructed the tunnels. It owns the tunnels, tracks, equipment, and other property connected therewith, except the terminals and terminal facilities, which are owned by the tunnel company. Under a contract the Chicago Tunnel Company performs the transportation for and in the name of the tunnel company. The tunnel company maintains and operates the terminal facilities at the stations and elevators. The tunnels are underneath the streets of the main wholesale and retail district of the city. They aggregate about 60 miles in length, are 7.5 feet high and 6 feet wide, and contain railroad tracks of a gauge of 2 feet, which are operated by electricity. Access to the tunnels from the surface is afforded by 58 elevators which connect with the stations of the various railroads entering Chicago, 19 elevators connected with commercial houses or industries, and 5 elevators at so-called universal stations. Other elevators used for deliveries of coal to industries and buildings and at a disposal station on the lake front are not involved in this proceeding. The railway equipment consists of 132 electric motors of from 30 to 50 horsepower, 2,402 merchandise

cars, 350 excavating cars, 235 coal and ash cars, and 8 miscellaneous cars.

The tunnel company has two classes of freight stations: One, "universal" stations, at which less-than-carload shipments of freight are received from and delivered to the public generally; the other, "commercial" stations, which are located at industries or commercial houses and are analogous to private sidings.

At freight stations of the trunk lines the tunnel company elevates its loaded cars to the floor level, where they are moved from the elevators onto tracks laid upon the floors of the stations and are unloaded by the employees of the line-haul carriers. Inbound shipments taken from the freight stations of the line-haul carriers by the tunnel company are handled in a similar manner.

Commercial houses and industries served by the tunnel company have expended large sums to provide themselves with connections with its tracks.

The tunnel company receives its compensation out of the through rates, without limitation as to the amount of freight taken from or delivered to the line-haul carriers, if the freight originates or is delivered at its universal stations. On that originating at its commercial stations it receives no division of the through rate or compensation from the line-haul carriers unless certain minimum quantities are delivered to it by one shipper, or by it to one consignee from one of the line-haul carriers, in one day, nor unless the gross revenue accruing to the line-haul carrier and its connections on the required minimum quantity of freight equals or exceeds \$15. The minimum quantities are fixed at 6,000 pounds for the western lines and 10,000 pounds for the eastern lines. In certain specified instances the required minimum inbound may come jointly from two or more line-haul carriers. In instances in which

the required minimum weight is not delivered, or in which the gross earnings do not amount to \$15, the shippers and consignees are required to pay the local charges of the tunnel company in addition to the Chicago rates. These additional charges accrue on about 25 per cent of the traffic handled by the tunnel company. The divisions of the rates accruing to the tunnel company are generally the same as its local rates, 4 cents per 100 pounds on shipments to or from industries, or from one railroad connection to another railroad connection, and 6 cents per 100 pounds on shipments to or from its universal stations.

During 1914 the tunnel company handled at its universal stations 275,218 tons of merchandise, and the total tonnage in the same year was 609,320 tons. Its universal stations are located in different parts of the city, and each serves as a great convenience to many shippers. Its commercial stations are, of course, located along the lines leading to or through the universal stations. It files tariffs and reports with the Commission, keeps its accounts in accordance with their prescribed classification, and holds itself subject to all of the requirements of the act. It settles loss and damage claims and is a member of the Freight Claim Agents' Association. It has long been recognized by connecting railroads, the shipping and receiving public, and the Commission, as a common carrier.

Rates in Chicago Switching District, 34 I. C. C. Rep. 234, 235.
Merchants & Manufacturers Assn. vs. P. R. R. Co., 32 I. C. C.
Rep. 434, 435.

§ 16. The Switching Service as Affected by Car Ferries, Lighters, Etc.

Across some of the larger rivers, some of the Great Lakes, and several important harbors, the railroads maintain and operate as a part of their through routes, car

ferries for the transportation of entire trains across such rivers, lakes, and harbors. Barges and large steamboats equipped with tracks for receiving the cars are employed in this "ferry" service.

Notable instances of the operation of such car ferries are across Lakes Michigan and Erie, the Detroit River at Detroit, and across New York, Boston, and San Francisco harbors.

These car ferries are operated as a part of the transportation services called for by the through rate, and under the duty of the carrier to move shipments via cheapest routes in absence of routing designation by shipper, a "car-ferry" route must be considered an "all-rail" route. If the rail carrier's tracks end at the bank or shore of a navigable waterway, and on the opposite bank or shore is situated the commercial terminus of the road, a transportation service by water is necessary in order to accomplish proper deliveries at and within the commercial terminus. This necessitates the construction, maintenance, and operation of wharves, docks, piers, barges, car ferries, and lighters, for the transferring of the traffic from the track terminus to the opposite bank or shore of the waterway. The service thus performed in the transferring of cars and shipment across the water course, while analogous to switching service in its secondary relation to the general transportation service, is, in reality, a distinct transportation service by water requiring special facilities both on land and on water, and requires such switching service as may be necessary to place cars at or take them from the wharves, docks, piers, or upon the water carrying facilities for passage over the waterway and movement upon the opposite shore or bank.

This kind of a secondary transportation service is typically illustrated in the case of New York City. "The

geographical and physical conditions of the port of New York are such that lighterage or transfer of cars by floats is indispensable. All roads are obliged to do it, more or less, and it is done for all kinds of traffic and for shippers generally. It is simply a necessity of the situation, and doubtless an inconvenience and expense that all would be glad to avoid if possible." (From Fed. Sugar Refg. Co. of Yonkers vs. B. & O. R. R. Co., 17 I. C. C. R. 40.)

Most of the railroads hauling New York traffic arrive at their track termini on the New Jersey shore of the North River, with their commercial termini, New York City, and Brooklyn, on the opposite shores of North River, East River, and New York Bay. The most extensive system of wharves, docks, piers, lighters, barges, car ferries or floats is maintained and operated in New York Harbor in the world.

(1) **New York Harbor.** The railroads have established so-called lighterage limits in and about New York Harbor; that is to say, they have prescribed limits within which they will, at the flat New York rate, receive and deliver traffic at points in New York Harbor. The free lighterage limits are defined in their tariffs as follows:

(2) **North River.** New York side: Battery to One Hundred and Thirty-fifth street.

New Jersey side: National Storage Docks, Communipaw, to and including Fort Lee, N. J.

(3) **East River and Harlem River.** New York side: Battery to Jerome Avenue Bridge, including Harlem River side of Wards and Randalls islands.

Brooklyn side: From Pot Grove, Astoria, to and including Newtown and Dutch Kills Creeks, and points in Wallabout Canal west of Washington Avenue Bridge and to Hamilton Avenue Bridge, Gawnaus Canal, and to and including Sixty-ninth street, South Brooklyn (Bay Ridge).

(4) **New York Bay.** Points on north and east shores of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island.

Points on the New Jersey shore of New York Bay and on the Kill van Kull between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, Staten Island.

The practical effect of the lighterage service established by the roads is to extend their lines to New York and Brooklyn instead of stopping at the western side of the Hudson. In some instances the piers to and from which freight is lightered are the property of individual railroads; others are used as union terminals by all the defendants. In case of certain bulky articles requiring special equipment the roads do not perform the lighterage service themselves, but make an allowance to outside lighters which perform the service for them. (For more complete description of lighterage facilities and water front terminals in New York Harbor, see *Fed. Sugar Refg. Co. of Yonkers vs. B. & O. R. R. Co.*, 17 I. C. C. R. 40, et seq.)

Free lighterage will be rendered in New York Harbor as follows:

On commodities for which no carload weight or rate is fixed in the classification, when billed weight is 3,000 pounds, or more, or when loaded to the full capacity of the car:

Cotton, tobacco (in cases, barrels, or hogsheads), when billed weight is 20,000 pounds, or more.

Dressed poultry, butter, cheese, and eggs, when billed weight is 10,000 pounds, or more.

On less than carload shipment of eastbound freight (which is lighter-free in carloads) received in the same car with a carload or more of lighter free freight for the same consignee for delivery at the same time.

On heavy articles, weighing less than 3 tons.

L. C. L. shipments are subject to the following rule in the lighterage regulations of New York Harbor:

"In the event the freight charges to New York on a less than carload shipment which, when shipped in carload quantities, is entitled to free lighterage, plus the minimum charge of nine dollars (\$9) on domestic freight and six dollars (\$6) on export freight, aggregate more than the freight charges computed on the classification minimum carload weight, the shipment will have the benefit of the minimum carload charge and free lighterage, the lighterage to be deducted from the billing instead of being added to the freight charges."

Free floatage is allowed only on lots of six or more carloads destined to one harbor point.

The New York Harbor scale of lighterage and floatage charges is, in its more important aspects, as follows:

Domestic freight, each delivery.....\$9.00

Export freight, each delivery..... 6.00

This is in addition to the freight rate.

Less than carload shipments of freight (lighterage-free in carloads) may be moved via lighter at the option of the carrier, but is subject to a charge of 3 cents per 100 pounds, with a minimum of \$9.00 for each less than carload domestic shipment, and a minimum of \$3.00 for each less than carload export shipment, in addition to regular transportation charges.

If a part of a carload export shipment be lightered for domestic delivery, the entire carload will be charged for at the domestic carload rate and minimum carload weight, unless the actual weight is in excess of such carload minimum, in which case the actual weight will govern.

On eastbound lighterage-free freight, three (3) free export lighterage deliveries will be allowed at ship-side, or one free domestic lighterage delivery will be afforded, from a single carload of such freight.

Additional lighterage deliveries from the same car are charged for at the rate of 3 cents per 100 pounds, minimum of \$6.00 for each lighterage delivery.

Any remainder of freight from the same car may be delivered in one lot at any one time at any one regular lighterage station, and will be charged \$1.00 in addition to the regular freight charges.

All shipments to and from New York not lighterage-free are charged for upon the actual weight of the shipment, but not less than the minimum carload weight provided in Official Classification, at a rate of 3 cents per 100 pounds, or sixty (60) cents per ton, net or gross, as rated in the Official Classification, with a minimum charge of \$9.00, subject to extra charges on all articles exceeding 3 tons in weight, each, in accordance with the following table:

On pieces, each weighing:	Per ton
Over 3 to 20 tons	\$0.40
Over 20 to 30 tons65
Over 30 to 35 tons	1.15
Over 35 to 40 tons	1.90
Over 40 to 45 tons	2.40
Over 45 to 50 tons	2.90

These additional charges apply on heavy articles subject to lighterage-free rates.

A charge of \$5.00 is made for each additional round trip switch movement of cars containing perishable goods, between train yards and lighterage piers for refrigeration purposes, after car has been once set for unloading and a delivery has been made and property is held in cars under refrigeration for lighterage delivery.

A charge of \$9.00 per car is made for car float service on carload shipments for delivery at piers or ship-side, if less than six cars are moved to a single harbor point. However, six times the carload minimum weight may be floated

free to a single harbor point even if loaded in less than six cars.

At other important harbors, such as Chicago and San Francisco, there are also in effect lighterage regulations and charges. There is a marked difference, however, as between ports, in the character of such regulations, in order to meet the individual harbor requirements, and, at a number of important harbors, terminal facilities and shipping have been developed in such a manner as to make lighterage unnecessary.

The defining of the term "transportation" in Section 1 of the Act to Regulate Commerce is sufficiently broad to include authority over water front terminal and lighterage or floatage facilities when the same are employed in conjunction with a rail and water carriage of through interstate shipments, or an all rail movement thereof.

Act to Reg. Com. (Amd. 1910), Sect. 1, par. 1.

Therefore, it must not be inferred that the Commission (the Interstate Commerce Commission) disclaim jurisdiction over lighterage service. On the contrary, that service must be conducted in accordance with the requirements and prohibitions of the act.

Fed. Sugar Refg. Co. vs. B. & O. R. R. Co. et al., 17 I. C. C. Rep. 40, 45.

The Commission has recently reviewed its authority over lighterage service, and its holding would seem to indicate that it does not afford to lighterage or floatage service the character of a distinct water transportation service, but rather accessorial to the transportation wholly by rail. It has conceded that lighterage might be regarded as a species of cartage.

In the Federal Sugar Refining Co. case, the Commission said:

"In our judgment the Brooklyn terminals in question, like others within the lighterage limits of New York Harbor, are the railroad terminals of defendants in that city, none the less so because they are reached by ferries instead of bridges. For these are the places to and from which Brooklyn traffic is taken in the cars in which it is transported, the places where that traffic is received from and delivered to the public, where it is loaded into and unloaded from defendants' cars substantially the same as if those cars were not floated across a river. To and from these places, and serving the public in that capacity, the defendants are common carriers 'wholly by railroad' within the meaning of that phrase in the first section of the act."

Fed. Sugar Refg. Co. of Yonkers vs. B. & O. R. R. Co., et al.,
17 I. C. C. Rep. 40, 46.

This ruling applies with equal force to the water front terminals and lighterage facilities at Boston, San Francisco, and Chicago harbors.

Where a common carrier operates a rail line and also a water line, with wharf connection between the two, and denies the use of such wharf or dock to other water lines, the federal court has held that "Section 3 of the act contemplates independent carriers besides the offending railroad, capable of mutual relations, and capable of being objects of favor or prejudice, and for a carrier to prefer itself in its own proper business is not the discrimination which is condemned by the statute."

Ilwaco Ry. & Nav. Co. vs. Ore. S. R. & U. N. R. Co., 57 Fed. Rep. 673 (15 U. S. App. 173), from 5 I. C. R. 627.

In this connection see following cases before the Com-

mission dealing with car-ferries, their operation, management, cost, and effect upon rates:

- Lighterage, etc., at New York, 35 I. C. C. Rep. 47, 50, 51.
- P. M. & B. L. E. R. R. Co.'s Operation of Car Ferries, 34 I. C. C. Rep. 86, 89.
- A. A. R. R. Co. Operation of Car Ferry Boats, 34 I. C. C. Rep. 83, 85.
- Joint Ownership and Operation of Mackinac Transp. Co., 34 I. C. C. Rep. 229, 230.
- G. T. Ry. Co. of Canada Operation of Ontario Car Ferry Co., 34 I. C. C. Rep. 49, 50, 51.
- B. R. & P. Ry. Co., Operation of Car Ferry, 34 I. C. C. Rep. 52, 53.
- G. T. W. Ry. Co., Operation of Milwaukee Car Ferry Co., 34 I. C. C. Rep. 54, 57.
- P. Co. Operation of Pennsylvania Ontario Transp. Co., 34 I. C. C. Rep. 47, 48.
- Grain Rates from Milwaukee, 33 I. C. C. Rep. 417, 419.
- Petit Salt Co. vs. C. M. & St. P. Ry. Co., 33 I. C. C. Rep. 590, 591.
- Car-Ferry Allowance at Cheboygan, Mich., 32 I. C. C. Rep. 578.
- Illinois Coal Cases, 32 I. C. C. Rep. 659, 681.
- Colonial Salt Co. vs. C. B. & Q. R. R. Co., 31 I. C. C. Rep. 559, 669.
- Break-Bulk Rates on Grain, 30 I. C. C. Rep. 357, 363.
- Industrial Railways Case, 29 I. C. C. Rep. 212, 227.
- Pardee Works vs. C. R. R. Co. of N. J., 29 I. C. C. Rep. 500, 501.
- Norman Lbr. Co. vs. L. & N. R. R. Co., 29 I. C. C. Rep. 565, 569.
- Paducah Bd. of Trade vs. I. C. R. R. Co., 29 I. C. C. Rep. 593, 599.
- Becker vs. P. M. R. R. Co., 28 I. C. C. Rep. 645, 647.
- Chicago Lighterage Charges, 28 I. C. C. Rep. 390, 391, 394.

§ 17. Switches and Switch Connections.

The provisions in the amended act (Hepburn act) relating to switching connections between roads is based upon the "open-gateway policy" and intended for the benefit of the shipper who wishes to market his product in the widest

practicable field and have the most direct connection therewith.

The Interstate Commerce Commission, in speaking of the requirement of the amended first section of the act that carriers subject thereto shall construct, maintain, and operate switch connections with lateral branch lines of railroads, says:

"The provision of the statute, as we construe it, is based upon what might be termed the 'open-gateway policy'; the thought of Congress was for the shipper—the manufacturer, the mine owner, the lumberman—who wishes to market his product in the widest practicable field and have the most direct connection therewith. Such theory is in harmony with the long-standing provision in Section 3 of the act requiring carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith. And it is further in step with the spirit of that requirement of Section 1 that carriers shall furnish transportation upon reasonable request therefor and shall establish through routes and just and reasonable rates applicable thereto. These are all essentially shippers' provisions, and the amendment of 1906 respecting switching connections is but complementary. The shipper who heretofore might tender his freight at the yards of the defendant in Summit may now build a track, or procure one to be built, which will enable him to load his car at his factory and tender the loaded car itself to the carrier. The fact that the track from the industry to the main line has already been built by an independent railroad does not in any wise invalidate or affect the strength of this conclusion."

Rahway Valley R. R. Co. vs. D. L. & W. R. R. Co., 14 I. C. C. R. 191, 194.

§ 18. Switch Connections Required by Act to Regulate Commerce.

"Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper."

Act to Reg. Com. (Amd. 1910), Sect. 1, par. 8.

It will be noted that the mandate of the statute is predicated upon three conditions:

First—That the connection is reasonably practicable.

Second—That it can be put in and maintained with safety.

Third—That it will furnish sufficient business to justify the construction and maintenance of the connection.

§ 19. Jurisdiction and Authority of Commission to Require Switch Connections.

"If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the Commission, as provided in section thirteen of this act, and the Commission shall hear and investigate the same and

shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money."

Act to Reg. Com. (Amd. 1910), Sect. 1, par. 8.

Prior to the amendment of 1906 the application could only be made by the shipper in writing. Since the recent amendment of June 18, 1910, however, the application for such switch connection may be made either by a shipper or the owner of the lateral, branch line of railroad.

For holdings of the Commission under the act prior to the amendment of 1910, see:

Nield vs. C. St. P. M. & O. Ry. Co., 12 I. C. C. R. 202.

McRae Term. Ry. Co. vs. So. Ry. Co. et al., 12 I. C. C. R. 270.

Weleetka Light & Water Co. vs. Ft. S. & W. R. R. Co., 12 I. C. C. R. 503.

§ 20. Interstate Commerce Commission Without Power to Require Switch Connections.

Formerly the carriers could extend their rails to the mines, plants, and industries of such shippers as they chose, and the shipper persona non grata to the officers of the carriers, was compelled to get his shipments to and from the public terminals as best he might by dray or otherwise. In many instances shippers who had business of a sufficient size to warrant the expense, built spur tracks from their plants to a connection with the trunk line. Others were located so far from the trunk line that it was necessary to form a common-carrier organization in order

to condemn a right of way to reach the trunk line rails. Carriers continued to afford the service to such shippers as they chose at the local basis of rates; in other cases they declined to permit a connection with their tracks even after the industrial spur track had been built. By the amended act, carriers may be compelled to make connection with spur tracks built by shippers or with lateral lines of railroad and to operate such switch tracks at a reasonable compensation therefor.

By Section 1 of the amended act to regulate commerce the Commission is authorized to order the construction and maintenance, upon reasonable terms, of "a switch connection" with any lateral, branch line of railroad, or "private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same." From the language of this section it is clear that the Commission has no authority to order the construction of a private side track by a railroad company, but that its authority is limited to ordering a carrier to make "a switch connection" with a private side track. "Certainly our authority does not embrace," said the Commission, "the power to order a carrier to construct and maintain a side track off its right of way and without direct contribution by the shipper to the expense incident thereto."

Winters Metallic Paint Co. vs. C. M. & St. P. Ry. Co. et al., 16 I. C. C. R. 587, 589.

Ralston Townsite Co. vs. M. P. Ry. Co., 22 I. C. C. R. 345, 356. Second Industrial Railways Case, 34 I. C. C. Rep. 596, 602.

Consolidated Pump Co. vs. L. S. & M. S. Ry. Co., 27 I. C. C. Rep. 519.

Morris Iron Company vs. B. & O. R. R. Co., 26 I. C. C. Rep. 240, 243.

St. L. S. & P. R. R. Co. vs. P. & P. U. Ry. Co., 26 I. C. C. Rep. 226, 230, 231.

U. S. vs. B. & O. S. W. R. R. Co., 226 U. S. 14.

B. & O. S. W. vs. U. S., 195 Fed. Rep. 962, enjoining order of the Commission in C. & C. T. Co. vs. B. & O. S. W. R. R. Co., 20 I. C. C. Rep. 486.

The words, "lateral branch line railroad," as used in the amendment to the Act of 1910, respecting the ordering by the Commission of switching conditions, does not refer to what the applicant's railroad may become or be made by order of the Commission, but to what it already is when it applies.

U. S. vs. B. & O. S. W. R. R. Co., 226 U. S. 14.

See also—

West End Enp. Club vs. O. & C. B. N. Co., 17 I. C. C. Rep. 239, 244.

Switching at Galesburg, Ill., 31 I. C. C. Rep. 294, 295.

State vs. M. P. R. R. Co., 81 Neb. 15, 21; 115 N. W. Rep. 614.

Merchants & Mfgs. Assn. of Baltimore vs. P. R. R. Co., 23 I. C. C. Rep. 414, 416.

Ridgewood Coal Co. vs. L. V. R. R. Co., 21 I. C. C. Rep. 183.

C. & C. T. Co. vs. B. & O. S. W. R. R. Co., 20 I. C. C. Rep. 486, 488, 494.

Asso. Jobbers of Los Angeles vs. A. T. & S. F. Ry. Co., 18 I. C. C. Rep. 310, 313.

Reiter, Curtis & Hill vs. N. Y. S. & W. R. R. Co., 19 I. C. C. Rep. 290, 292.

Compare:

Industrial Railways Case, 29 I. C. C. Rep. 212, 213.

Winters Metallic Paint Co. vs. C. M. & St. P. Ry. Co., 16 I. C. C. Rep. 587, 589.

Rahway Valley R. R. Co. vs. D. L. & W. R. R. Co., 14 I. C. C. Rep. 191, 192, 193.

McCormick vs. C. B. & Q. R. R. Co., 14 I. C. C. Rep. 611, 612.

I. C. C. vs. D. L. & W. R. R. Co., 216 U. S. 531, 539.

B. & O. S. W. R. R. Co. vs. U. S., 195 Fed. Rep. 962, 969.

D. L. & W. R. R. Co. vs. I. C. C., — Fed. Rep. —.

Penna. Co. vs. U. S. et al., U. S. Supreme Court No. 591. Oct. Term 1914, 498.

P. C. C. & St. L. Ry. Co. vs. R. R. Com., 171 Ind. 189, 212, 86 N. E. Rep. 328.

§ 21. Switch Connections Not Left to Discretion of Interstate Commerce Commission.

The act declares that switch connections shall be made under certain specified circumstances and conditions. It does not confer upon the Commission plenary discretion as to the advisability of such connection. It is not contemplated by the law that appeal to the Commission shall be necessary; but it is provided that in case a carrier does not comply with the duty imposed, complaint may be made by a shipper (or, as the act is now amended, by the owner of any lateral, branch line of railroad) to the Commission, which shall have authority to make an order compelling the connection. Under the first clause of the provision it is the duty of the carrier to make the connection upon three conditions: (1) That such switch connection shall be reasonably practicable; (2) that it can be put in with safety; and (3) that it will furnish sufficient business to justify the construction and maintenance of such switch connection.

Rahway Valley R. R. Co. vs. D. L. & W. R. R. Co., 14 I. C. C. R. 191, 194.

Morris Iron Co. vs. B. & O. R. R. Co., 26 I. C. C. Rep. 240, 243.

See citations of case appended to Section 21 hereof.

St. L. S. & P. R. Co. vs. P. & P. U. Ry. Co., 26 I. C. C. Rep. 221, 231.

§ 22. Applications for Switches and Switch Connections.

Under the statute the application for a switch connection should be made to the carrier in writing by either a shipper who tenders interstate freight for transportation or the owner of a lateral, branch line of railroad constructed to connect with the carrier's railroad. The application should, of course, recite the existence of the conditions precedent specified in the act. That is, the

application should recite the fact that the connection desired can be made with safety, that it is reasonably practicable and that it will furnish sufficient business to justify the construction and maintenance of the connection.

The jurisdiction of the Commission is predicated solely upon this application to the carrier. The statute specifically provides that before the shipper or owner of the lateral, branch line of railroad can file complaint with the Commission, such shipper or owner must have theretofore made the statutory application to the carrier.

Act to Reg. Com. (Amd. 1910), Sect. 1, par. 8.

§ 23. Location of Connection Fixed by Interstate Commerce Commission.

The Commission has declared that it is disposed, in recognition of the risk that naturally arises from such interruptions of through rails, to leave the location of a switch connection to the wisdom and discretion of the carrier, but the Commission does not relinquish its right to control the location of switch tracks to private industries in accordance with the facts and circumstances of each particular case.

Weleetka Light & Water Co. vs. Ft. S. & W. R. R. Co., 12 I. C. C. R. 503, 505.

See citations of cases appended to Section 21 hereof.

§ 24. Switch Connection with Electric Railway.

In *Cincinnati & Columbus Traction Co. vs. B. & O. S. W. R. R. Co. et al.*, 20 I. C. C. R. 486, 487, the Interstate Commerce Commission said:

"Under the Act to Regulate Commerce as amended express power is given us to grant such relief (referring to application by electrically operated railway for switch connection). If, therefore, the facts and conditions are such

as to warrant an order to that effect, we think we need not look beyond that act for any limitation upon our authority to enter it. A local law under which an electrically operated railway may have no right to demand a switch-track connection and interchange of traffic with a steam railway may be controlling in so far as it relates to traffic moving wholly within the state; but it can not be permitted to operate as an impediment to the movement of interstate traffic after the Congress has legislated upon the subject by specifying the grounds upon which interstate shippers may demand such connections and interchange of traffic. The general principles underlying this conclusion are well understood and have so often been enforced by the courts that the citation of authorities seems not to be required. . . .

"This is the first occasion upon formal complaint that we have had to examine the amended provision. But one point that seems to be entirely clear is that, although the complaint was filed before the amendment became effective, we can act only under the authority that we now have. We gather also from a careful reading of the amended clause that it was the purpose of the Congress to widen the scope of our powers to establish through routes and joint rates rather than to narrow them, and to leave in the Commission full discretion to act in such cases in the light of all the facts and circumstances and according to what may seem wise, fair, reasonable, and equitable in each case. We shall dispose of this complaint with that understanding of the extent of our authority."

See also—

U. S. vs. B. & O. S. W. R. R. Co., 226 U. S. 14.

B. & O. S. W. R. R. Co. vs. U. S., 195 Fed. Rep. 962, enjoining order of Commission in C. & C. T. Co. vs. B. & O. S. W. R. R. Co., 20 I. C. C. Rep. 486.

The effect of the holding by the Supreme Court of the United States, affirming the decision of the Commerce Court, was a reversal of the Commission ruling in the Columbus & Cincinnati Traction Company case, and the holding that this traction line was not a "lateral branch line of railroad" within the meaning of the amendment to the act of June 18, 1910.

§ 25. Reciprocal Switching.

Reciprocal switching is an arrangement between carriers at terminals and extensive interchange points under which carriers switch for each other incoming and outgoing carload freight under established switching charges, which charges are usually absorbed in whole or in part by the carrier that gets the line haul.

Under such an arrangement, the Commission holds, if the exclusion of a commodity from the application of a reciprocal switching arrangement results in increased charges, the carrier or carriers must justify the advance.

Crescent Coal & Mining Co. vs. B. & O. R. R. Co., 20 I. C. C. Rep. 559, 560, 565.

In re Advances on Ice, 24 I. C. C. Rep. 660.

Morris Iron Co. vs. B. & O. R. R. Co., 26 I. C. C. Rep. 240, 244.

§ 26. Power of Interstate Commerce Commission Does Not Rest Upon Contractual Relationship of Parties.

The power of the Commission under the first section of the act to require a switch connection is not founded upon any contractual relationship existing between carriers and those entitled to invoke the benefit of the statute, and the Commission is without jurisdiction to compel the carrier to specifically perform a contract in respect thereto or to award damages for the breach thereof. Therefore it is

unnecessary to consider whether the negotiations of the parties constitute an enforceable agreement, or to inquire into the rights and remedies incident thereto. Whether or not the applicants are entitled to an order under this provision of the act depends upon the existence of a state of facts which brings them within the terms of the statute and not upon an agreement entered into by the parties. The statute sets out in explicit terms the circumstances and conditions under which the Commission is empowered to make an order, and the evidence adduced must disclose a state of facts that brings the case within the purview of this enactment.

Ralston Townsite Co. et al. vs. M. P. Ry. Co., 22 I. C. C. R. 354, 355. (This case also construes the intention of Congress under this portion of the Act to Regulate Commerce.)

§ 27. Apportionment of Cost of Switch Connections.

The Act to Regulate Commerce, under the amended first section, requires the construction, maintenance and operation of a switch connection upon reasonable terms. This must be held to mean that a just and reasonable apportionment of the cost of the construction, maintenance, and operation should be made between the parties having regard to the benefits accruing to each party therefrom.

Act to Reg. Com. (Amd. 1910), Sect. 1, par. 8.

§ 28. Carrier May Be Refused Switch Connection Because of Nature of Traffic.

"The Commission does not think that a carrier can reserve to itself, or exercise, the right to determine as to what commodities shall or shall not be moved over a switch connection and dealt in by a dealer who is located upon a siding which is connected with carrier's line by

such switch, except in so far as is necessary and proper to afford protection to life and property against the handling or storage of dangerous commodities, such as explosives or highly inflammable liquids."

Barden & Swarthout vs. Lehigh Valley R. R. Company, 12 I. C. C. R. 193, 194.

Reiter, Curtis & Hill vs. N. Y. S. & W. R. R. Co., 19 I. C. C. Rep. 290, 292.

§ 29. Authority of City Officials and Rights of Property Owners Within Corporate Limits of Cities and Towns with Respect to Switch Connection.

Sidings and connections of the character defined by Section 1 of the amended act are frequently, if not generally, located within the corporate limits of cities or towns. It must, therefore, be remembered that in determining whether or not such connection will be ordered by the Commission in a case of which it has jurisdiction, the power and authority of those who are charged with administration of the affairs of the municipality, including its health officers, as well as the rights of the owners of adjoining and neighboring property, must be respected and be given full consideration.

Barden & Swarthout vs. Lehigh Valley R. R. Company, 12 I. C. C. R. 193, 194.

§ 30. Switch Connections Not Conclusive as to Establishment of Joint Rates.

It does not follow that all branch railroad lines having switch connection with a main line of railroad are entitled to joint rates; another provision of the act comes under construction and application in such regard.

Rahway Valley R. R. Co. vs. D. L. & W. R. R. Company, 14 I. C. C. R. 191, 194.

McCormick vs. C. B. & Q. R. R. Co., 14 I. C. C. Rep. 611.

C. & C. T. Co. vs. B. & O. S. W. R. R. Co., 20 I. C. C. Rep. 486.

§ 31. Latest Construction of Act Governing Switch Connections by Interstate Commerce Commission.

Switch connections can be ordered by the Commission under Section 1 of the amended act, only with a lateral, branch line or with a private side track. And a small independent carrier parallel to and competing with a trunk line is not a lateral branch line of railroad, and although its tracks may be within a few feet of the trunk line, the Commission has no authority to order a physical switching connection to be made for the purpose of interchanging traffic.

St. L. S. & P. R. R. Co. vs. P. & P. U. Ry. Co., 26 I. C. C. Rep. 226, 230.

Morris Iron Co. vs. B. & O. R. R. Co., 26 I. C. C. Rep. 240, 243.

See also—

U. S. vs. D. L. & W. R. R. Co., 216 U. S. 531, 537, holding that only a shipper may lawfully apply for the establishment of switching connections.

U. S. vs. B. & O. S. W. R. R. Co., 226 U. S. 14.

CHAPTER VIII.

RECONSIGNMENT SERVICE AND RULES GOVERNING.

- § 1. General Nature of Reconsignment.
- § 2. Reconsignment as a Service Includes Changes in Consignee, Destination, Routing, Etc.
- § 3. Reconsignment Rules and Changes Must Be Reasonable.
- § 4. Conditions Governing Reconsignment Privileges Must Be Published.
- § 5. Reconsignment Rules Not to Be Given Retroactive Effect.
- § 6. Reconsignment is a Privilege That is Optional With the Carrier Initially; Shipper May Not Demand it as a Matter of Right.
- § 7. Reconsignment is a Privilege for Which Carrier May Demand Compensation.
- § 8. Reconsignment Should Be Reasonable.
- § 9. Reconsignment of Part-Lots of Storage Freight.
- § 10. Cancellation of Reconsignment Privileges at Option of Carrier Inconsistent With Act to Regulate Commerce.
- § 11. Carrier's Duty When Reconsignment is Unauthorized by Shipper.
- § 12. Reconsignment of Refused or Damaged Shipments.
- § 13. Reconsignment Privileges and Charges Under the Jurisdiction of the Interstate Commerce Commission.
- § 14. Carrier is Entitled to Cost of Rendering Reconsignment Service.
- § 15. In Absence of Reconsignment Privilege Local Rates Applicable.
- § 16. Discrimination in Reconsignment Privileges.
- § 17. Effect of Misrouting Resulting in Loss of Privilege.
- § 18. Carrier May Limit Number of Free Reconsignments.
- § 19. Failure of Connecting Line to Observe Reconsignment Directions.
- § 20. Forty-eight Hour Limitation of Reconsignment Not Generally Unreasonable.
- § 21. Order Shipments.

CHAPTER VIII.

RECONSIGNMENT SERVICE AND RULES GOVERNING.

§ 1. General Nature of Reconsignment.

In considering the general nature of the reconsignment service, the Interstate Commerce Commission has said:

"In the ordinary acceptation of the term, a reconsignment refers to a change in destination, accompanied or not by a change in the name of the consignee, rather than to a mere change in the name of the consignee; but the latter change is recognized by our conference ruling No. 72 as a reconsignment and the defendants are therefore justified in putting that interpretation upon their tariff. It does not follow, however, that carriers should impose the same charge for every reconsignment. The conference ruling correctly states the case. The privilege of reconsignment is a thing of value to the shipper and of expense to the carrier; therefore, a charge may be made; but the value and extent of that service vary and the charge should be in proportion to the service." (1)

Reconsignment, although often referred to as a privilege, is primarily a service in connection with the transportation of property, (2) and is largely the outgrowth of commercial conditions not created by the carrier. (3) The Interstate Commerce Commission has not, however, ordered the granting of reconsignment, nor its extension except to remove discriminations or where the rules were unreasonable. (4)

(1) *Beekman Lbr. Co. vs. K. C. S. Ry. Co.*, 17 I. C. C. Rep. 86, 87.

Cedar Hill C. & C. Co. vs. C. & S. Ry. Co., 15 I. C. C. Rep. 546.

(2) Doran & Co. vs. N. C. & St. L. Ry. Co., 33 I. C. C. R. 523, 527.

(3) C. & N. W. Ry. Co. Reconsignment Rules, 29 I. C. C. R. 620, 623.

(4) C. & N. W. Ry. Co. Reconsignment Rules, 29 I. C. C. Rep. 620, 623.

“Diversion” and “reconsignment” are distinguishable terms. Diversion consists of a change in the destination of a shipment before arrival at the original billed destination, whereas reconsignment is a change to another destination after arrival at original billed destination. (5)

Reconsignments and diversions are required in modern business and are regarded as commercial necessities. (6)

The Commission has in no case condemned reconsignment as a service, holding that within reasonable limits it is of benefit to shippers and not without its advantages to the carriers. (7)

While there is no inherent right in the shipper to demand reconsignment of shipment, the Commission has broadly viewed the granting of the right of reconsignment by carriers, and holds under reasonable practices the carriers may not deny the reconsignment service, but is entitled to reasonable compensation therefor.

Usually the combination of intermediate rates is higher than the through rate. Frequently a shipper desires to forward a shipment to a certain point and have the privilege of changing the destination or consignee while shipment is in transit, or after it arrives at destination to which originally consigned, and to forward it under the through rate from point of origin to final destination. Many carriers grant such privilege and generally make a charge therefor. (9)

(5) C. G. Justice Co. vs. P. R. R. Co., 26 I. C. C. Rep. 478, 479.

- (6) Central Commercial Co. vs. L. & N. R. R. Co., 27 I. C. C. R. 114, 115. In re Advances in Demurrage, 25 I. C. C. R. 314, 316.
- (7) Doran & Co. vs. N. C. & St. L. Ry. Co., 33 I. C. C. R. 523, 528; Kalmbach-Ford Co., Lt. vs. K. C. S. Ry. Co., 26 I. C. C. R. 289, 290.
- (8) Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. Rep. 451, 455.
- (9) I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 72-(a).

Reconsignment is a privilege under which goods may be forwarded to a point other than their original destination, without removal from the car and at the through rate from the initial point to that of final destination. It is allowed in two distinct classes of cases. First, a shipment while in transit to a given point may be diverted to another market, provided the order is received before the car passes the proper junction point, and this is usually allowed without additional charge. Second, a shipment may be reconsigned after arrival at original destination; this reconsignment at destination usually involves an additional charge.

Detroit Traf. Assn. vs. L. S. & M. S. Ry. Co., 21 I. C. C. Rep. 257, 258, 259.

§ 2. Reconsignment as a Service Includes Changes in Consignee, Destination, Routing, Etc.

Some carriers do not count a change of consignee which does not involve a change of destination as a reconsignment, while others do consider it a reconsignment and charge for it as such. The Commission holds the view that without specific qualifications the term "reconsignment" includes changes in destination, routing or consignee. If carrier wishes to distinguish between such

changes in its privileges or charges it must so specify in its tariff rules.

Conf. Rulings Bull. No. 6, Rulings No. 72-(c). Rule No. 74, Tariff Circular No. 18-A.

Jung & Sons Co. vs. L. & N. R. R. Co., 31 I. C. C. Rep. 455, 457.

§ 3. Reconsignment Rules and Charges Must be Reasonable.

Reconsignment rules and charges must be reasonable, and a charge that would be reasonable for a diversion or change of destination might be unreasonable when applied to a simple change in consignee which did not involve change in destination or more expensive delivery.

Conf. Rulings Bull. No. 6, Rulings No. 72-(c).

The generally accepted standard is that reconsignment should be permitted on the basis of the through rate plus a reasonable charge for extra service in those instances where no change of contents of car nor additional haul nor out-of-line service is involved.

Central Commercial Company vs. L. & N. R. R. Co., 27 I. C. C. Rep. 114, 116.

See Chap. VIII, this volume, Sect. 7, "Reconsignment is a privilege for which carrier may demand compensation."

"The privilege of reconsignment is a thing of value to the shipper and of expense to the carrier; therefore a charge may be made, but the value and extent of that service vary and the charge should be in proportion to the service."

Beekman Lbr. Co. vs. K. C. S. R. Co. et al., 17 I. C. C. R. 86, 87.

The Detroit Reconsigning Case, 25 I. C. C. Rep. 392.

In re Express Rates, 24 I. C. C. Rep. 380, 412.

Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. Rep. 160, 174.

- Detroit Traffic Assn. vs. L. S. & M. S. Ry. Co., 21 I. C. C. Rep. 257.
 Arlington Heights Fruit Exchange vs. S. P. Co., 19 I. C. C. Rep. 148, 152.
 St. Louis Hay & Grain Co. vs. M. & O. R. R. Co., 19 I. C. C. Rep. 533, 534, 535.
 Beekman Lbr. Co. vs. K. C. S. Ry. Co., 17 I. C. C. Rep. 86, 87.
 Cedar Hill Coal & Coke Co. vs. C. & S. Ry. Co., 16 I. C. C. Rep. 560.
 Cedar Hill Coal & Coke Co. vs. C. & S. Ry. Co., 15 I. C. C. Rep. 546, 549.
 Beekman Lbr. Co. vs. St. L. S. W. Ry. Co., 14 I. C. C. Rep. 532, 534.
 Kehoe & Co. vs. I. C. R. R. Co., 14 I. C. C. Rep. 541, 544.
 Unreported Ops. 544 and 510.

§ 4. Conditions Governing Reconsignment Privileges Must be Published.

A reconsignment privilege must be published in tariff form and filed with the Commission. (1) A circular purporting to authorize reconsignment is not a lawful tariff, but is more in the nature of a private contract between the carrier and the shipper. (2) And reparation will not be awarded by the Commission on the basis of a reconsignment privilege customarily extended by the carrier, unless duly published in its tariff. (3)

- (1) Kile & Morgan Co. vs. Deepwater Ry. Co., 15 I. C. C. R. 235, 238.
- (2) Kile & Morgan Co. vs. Deepwater Ry. Co., 15 I. C. C. R. 235, 237.
- (3) Unreported Op. 267.
 Unreported Op. a-24.

The privilege of reconsignment is of value to the shipper, and in order to avoid discrimination it is necessary for the carrier that grants such privilege to publish in its tariff that fact, together with the conditions under which it may be used and the charge that will be made therefor. Such

rules should be stated in terms that are not open to misconstruction.

Conf. Rulings Bull. No. 6, Ruling No. 72-(b).

Act to Reg. Com. (Amd. 1910), Sect. 6, provides that schedules "shall also state separately all terminal charges, . . . and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper or consignee."

If a carrier wishes to distinguish between reconsignments as affected through change of consignee, or of destination, or of routing, in its privileges or charges, it must so specify in its tariff rules.

Conf. Rulings Bull. No. 6, Ruling No. 72-(c).

"The privileges embodied in a separate storage and reconsignment tariff issued by one carrier cannot be availed of, or applied to movements under a joint tariff to which that carrier and two others are named as parties, unless the latter tariff by express reference to the former so provides."

Washington Broom & W. Co. vs. C. R. I. & P. Ry. Co., 15 I. C. C. R. 219 (syl.).

§ 5. Reconsignment Rules Not to be Given Retroactive Effect.

A shipment consigned to one point was reconsigned en route to another, the tariff containing no reconsignment privilege. As a consequence local rates to and from the reconsigning point were applied and made higher than the through rate. The Commission held that under subsequent tariff that did not reduce rates, but incorporated a reconsignment privilege, the benefit of such privilege

could not be applied retroactively to a previous shipment and cannot be accepted as the basis for a refund on special reparation docket.

Conf. Rulings Bull. No. 6, Ruling No. 6, Nov. 11, 1907.

Rule 6, providing that the benefit of reconsignment privileges cannot be given retroactive effect, is held to include cleaning, milling, concentration and other transit privileges.

Conf. Rulings Bull. No. 6, Ruling No. 77, May 14, 1908.

Adhering to Rule 6, the Commission will not sanction the application, retroactively, of a reconsignment privilege, even though it had long been the custom of the carrier to permit reconsignment without tariff authority.

Conf. Rulings Bull. No. 6, Ruling No. 166, Apr. 13, 1909.

"The Commission has consistently held in the past that it could not with propriety make a reconsignment privilege retroactive in practical effect by ordering reparation on shipments made at a time when the same was not available, the basis of such reparation being the nonavailability of such privilege at the time shipments moved and the subsequent publication of the same. It seems clear that the privilege as published in tariffs in effect at the time the shipment in question moved was not applicable thereon because one of the essential conditions under which that privilege was to be had, to wit, that the reconsignment should be accomplished within seventy-two hours after arrival of the shipment at first destination, was not met."

Cady Lumber Co. vs. M. P. Ry. Co., 19 I. C. C. Rep. 12, 13.
Sunnyside Coal Min. Co. vs. D. & R. G. R. R. Co. et al., 16 I. C. C. R. 558, 559.

§ 6. Reconsignment is a Privilege That is Optional with the Carrier Initially; Shipper May Not Demand It as a Matter of Right.

Reconsignment is a privilege of analogous nature to milling in transit, and the granting or refusal of the same is optional with the carrier. Nor may the shipper demand the allowance of reconsignment privilege as a matter of right.

Diamond Mills vs. B. & M. R. Co., 9 I. C. C. R. 311.

Koch et al. vs. P. R. R. Co. et al., 10 I. C. C. R. 675.

The stopping of a commodity in transit for the purpose of treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper cannot, in the present state of the law, demand as a lawful right.

St. L. H. & G. Co. vs. M. & O. R. Co., 11 I. C. C. R. 90.

"The Commission has always regarded reconsignment as a privilege—not a right to be demanded by shippers—and we have consistently refused to extend the same, except to correct unjust discrimination."

Cedar Hill Coal & Coke Co. vs. C. & S. Ry. Co., et al., 16 I. C. C. R. 387, 392.

While reconsignment may be granted or withheld at the option of the carrier, when the privilege is voluntarily granted, it must be on terms that are reasonable and that do not result in undue discrimination.

Detroit Traf. Assn. vs. L. S. & M. S. Ry. Co., 21 I. C. C. R. 257, 262.

Dietz Lbr. Co. vs. Atchison, Etc., Ry. Co., 22 I. C. C. R. 75, 76.

The privilege of reconsignment properly carries no right of indefinite storage.

Detroit Traf. Assn. vs. L. S. & M. S. Ry. Co., 21 I. C. C. R. 257, 261.

In connection with the granting of the privilege of reconsignment in transit, thereby securing the benefit of the through rate to final destination, it should be remembered that the rules above set forth in no wise effect the right of the consignor or lawful owner of property in transit to reassign an order shipment or upon the consignor or owner's discovery of the insolvency or bankruptcy of the consignee, but such a reconsignment, in the absence of tariff authority providing for protection of through rate, requires the payment of the legally published rates to and from the point of reconsigning.

In its more recent rulings the Commission has declared that "reconsignment," although often referred to as a "privilege," is primarily a service in connection with the transportation of property.

The right of reconsignment, when provided for in lawfully filed tariffs, is in the shipper holding the original bill of lading.

The Commission also holds that diversion and reconsignment are required in the conduct of modern business.

Doran & Co. vs. N. C. & St. L. Ry. Co., 33 I. C. C. Rep. 523, 527.

Commercial Club of Omaha vs. A. & S. R. Ry. Co., 27 I. C. C. Rep. 302, 320.

Central Commercial Co. vs. L. & N. R. R. Co., 27 I. C. C. Rep. 114, 115, 116.

Reconsignment and Storage of Lumber & Shingles, 27 I. C. C. Rep. 451, 455.

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 316.

Detroit Traffic Assn. vs. L. S. & M. S. Ry. Co., 21 I. C. C. Rep. 257.

Crescent Coal & Mining Co. vs. B. & O. R. R. Co., 20 I. C. C. Rep. 257, 260.

§ 7. Reconsignment is a Privilege for Which Carrier May Demand Compensation.

The reconsignment of property in transit, or at destination, is a special privilege, which, under the present state

of the law, the carrier may or may not allow, but if conceded by the carrier, a reasonable charge may be exacted for the privilege.

Central Commercial Co. vs. L. & N. R. R. Co., 27 I. C. C. R. 114, 116.

Reconsignment & Storage of Lumber & Shingles, 27 I. C. C. Rep. 451, 455.

Weyl-Zuckerman & Co. vs. C. M. Ry. Co., 27 I. C. C. Rep. 493, 495.

St. L. H. & G. Co. vs. M. & O. R. Co., 11 I. C. C. R. 90.

Diamond Mills vs. B. & M. R. Co., 9 I. C. C. R. 311.

So. Ry. Co. vs. St. L. H. & G. Co., 214 U. S. 297, 53 L. Ed. 1004.

Conf. Rulings Bull. No. 5, Ruling No. 72.

§ 8. Reconsignment Should be Reasonable.

"The reasonableness of a reconsignment charge is dependent upon the cost of that service. . . . The fact that it is a privilege under which, generally speaking, the shipper secures the advantage of a lower through rate which would not have been accorded had the reconsignment privilege not been in effect must be considered. . . . We find that a charge of \$5 per car for a change of destination made before arrival or within twenty-four hours after arrival of car at first destination and before delivery, was, on the date these shipments were reconsigned or diverted, unjust and unreasonable to the extent that it exceeded the prior as well as the subsequently established charge of \$2 per car for the same service. This view is directed to the charge that may reasonably be made for a simple change in destination or consignee, which does not require any back or out-of-line haul, which is made before or promptly after arrival at billed destination, and in accordance with such reasonable rules as defendants may establish in connection with the privilege."

Cedar Hill C. & C. Co. vs. C. & S. Ry. Co. et al., 15 I. C. C. R. 546, 549.

Bd. of Trade, Etc. vs. C. B. & Q. R. R. Co. et al., 12 I. C. C. R., 173.

The Commission has held that it is not unlawful for carriers to maintain reconsignment rates that are higher than their proportion of through rates, and such fact alone would not warrant and support a charge of undue discrimination.

St. L. H. & G. Co. vs. I. C. R. Co., 11 I. C. C. R. 486.

See also—

Detroit Reconsigning Case, 21 I. C. C. Rep. 257, 262.

St. Louis Hay & Grain Co. vs. M. & O. R. R. Co., 11 I. C. C. Rep. 90.

Detroit Traffic Assn. vs. L. S. & M. S. Ry. Co., 21 I. C. C. Rep. 257, 264.

Mason Bros. vs. S. P. Co., 28 I. C. C. Rep. 402.

Central Com. Co. vs. L. & N. R. R. Co., 29 I. C. C. Rep. 114, 116.

Justice Co. vs. P. R. R. Co., 26 I. C. C. Rep. 478, 479.

In re Advances on Potatoes, 25 I. C. C. Rep. 159, 170.

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 316.

In re Express Rates, 24 I. C. C. Rep. 380, 412.

Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. Rep. 160, 174.

Arlington Heights Fruit Exchange vs. S. P. Co., 19 I. C. C. Rep. 148, 152.

St. Louis Hay & Grain Co. vs. M. & O. R. R. Co., 19 I. C. C. Rep. 533, 534, 535.

Beekman Lbr. Co. vs. K. C. S. Ry. Co., 17 I. C. C. Rep. 86, 87.

Cedar Hill Coal & Coke Co. vs. C. & S. Ry. Co., 16 I. C. C. Rep. 560.

Cedar Hill Coal & Coke Co. vs. C. & S. Ry. Co., 15 I. C. C. Rep. 546, 549.

Beekman Lbr. Co. vs. St. L. S. W. Ry. Co., 14 I. C. C. Rep. 532, 534.

Kehoe & Co. vs. I. C. R. R. Co., 14 I. C. C. Rep. 541, 544.

Unreported Ops. 544, 510.

See Chap. VIII, this volume, Sect. 3, "Reconsignment Rules and Charges must be reasonable."

§ 9. Reconsignment of Part-Lots of Storage Freight.

The reconsignment of part-lots of goods held in storage by the carrier upon the shipper's order is a valid use of the reconsignment privilege, and, if permitted, is subject to publication and impartiality in application.

Am. Warehousemen's Assn. vs. I. C. R. Co., 7 I. C. C. R. 556.

§ 10. Cancellation of Reconsignment Privilege at Option of Carrier Inconsistent with Act to Regulate Commerce.

The provision of a circular, filed with the Commission, for the cancellation of the reconsignment privilege at the option of the carrier and that required the signature of the shipper in order that he might avail himself of the privileges of the circular were manifestly inconsistent with the law governing the establishment and modification of tariff schedules, which must be available to all.

Kile & Morgan Co. vs. D. Ry. Co. et al., 15 I. C. C. R. 235, 237.

See also—

Central Coml. Co. vs. L. & N. R. R. Co., 27 I. C. C. Rep. 114, 115.

Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. Rep. 451, 455.

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 316.

Crescent Coal & Mining Co. vs. B. & O. R. R. Co., 20 I. C. C. Rep. 559, 570.

Detroit Traffic Assn. vs. L. S. & M. S. Ry. Co., 21 I. C. C. Rep. 257, 260.

§ 11. Carrier's Duty When Reconsignment is Unauthorized by Shipper.

A car of coal was forwarded to the destination named in the bill of lading, but the carrier not being able to find the consignee, and learning that a company of the same name at a near-by point was tracing a coal shipment, re-

consigned it to that point without consulting the consignor, and that subsequently proved to be the correct destination; Held, That a refund might be allowed upon showing that the additional transportation expense fell on the consignor.

In this connection the general principle is expressed in the following rule: If a shipper sends a shipment to an erroneous destination he should have the right to guard, so far as possible, against resulting loss by disposing of the shipment at that point. The carrier should not, therefore, forward such shipment to another destination with attendant additional transportation charges without having made reasonable effort to secure disposition instructions from the shipper.

Conf. Rulings Bull. No. 6, Ruling No. 237, Nov. 23, 1909.

§ 12. Reconsignment of Refused or Damaged Shipments.

In one form or another many carriers provide for the return free or at reduced rates, or the reconsignment under through rate from point of origin, of shipments that are damaged in transit or are refused by consignees. In answer for request for ruling the Commission expresses the opinion that in a nondiscriminatory way and within reasonable limits such rule is not unlawful or improper. Care should be taken to preserve the distinction between shipments in which the carrier has no interest except the collection of the transportation charges and which are reconsigned or returned purely out of consideration for the interests of the owner of the shipment, and shipments which, because of injury or damage in transit, are left on the carrier's hands and in which it has an interest to the extent of the transportation charges and the value of the shipment.

A rule providing that shipments which are refused by

consignee may be reconsigned and forwarded, under application of through rate from point of origin to final destination, either with or without the exaction of a reconsignment charge, is permissible. Where tariff provides for return of shipments at reduced rates the tariff rule must be strictly complied with. Such tariff rule should provide that waybill covering return movement and shipping receipt must show reference to original outbound shipment and waybill.

A rule providing for the reconsignment or return free or at reduced rates of articles damaged in transit is not improper if it is so framed and applied as to prevent abuses or improper practices under it. The practice of returning at reduced rates articles that have been delivered into the possession of consignees and have become shopworn or have gotten into a state of disrepair through use, is neither proper nor free from unjust discrimination. A rule according reduced rates on return shipments is proper only in so far as it applies to the return of shipments that are received by the consignee in bad order or are refused by consignee without examination. As to shipments that are not in closed packages and thus are open to immediate inspection, the rule should provide that in order to secure reduced rates on return movement, the goods shall not have left the possession of the carrier before such claim is made. As to goods that are in closed packages, the rule should provide that in order to secure reduced rates on return movement, such goods must be returned to the carrier within ten days.

Such rules must be in tariffs and must be applied without discrimination and should provide that rule for return of shipments applies only via the route and line over which the shipment moved. Uniformity among carriers in rules

and practices in such matters as these is desirable and contributes to thorough understandings and harmony between carriers and shippers.

Rule No. 67, Tariff Circular No. 18-A.

Conf. Rulings Bull. No. 6, Ruling No. 114, Nov. 12, 1908.

§ 13. Reconsignment Privileges and Charges Under the Jurisdiction of the Interstate Commerce Commission.

The Interstate Commerce Commission may entertain jurisdiction over reconsignment charges. Under the definition of the term "transportation" in Section 1 and the requirement of Section 6 that the schedules of the carrier shall state all privilege or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine any part of the aggregate of the transportation charge, the validity of all reconsignment privileges, services and charges in connection with interstate shipments is lodged exclusively with the Interstate Commerce Commission.

Act to Reg. Com. (Amd. 1910), Sect. 1.

Act to Reg. Com. (Amd. 1910), Sect. 6 and Sect. 15.

State, ex rel. vs. Atchison, Etc., Co., 176 Mo. 687, 75 S. W. 776.

G. C. & S. F. R. Co. vs. Texas, 204 U. S. 403, 51 L. Ed. 540.

See also St. L. H. & G. Co. vs. C. B. & Q. R. Co. et al., 11 I. C. C. R. 82, distinguishing reconsignment charge under jurisdiction.

See also Big Canon Ranch Co. vs. G. H. & S. A. R. Co., 20 I. C. C. R. 523, where reconsignment effected subsequent interstate movement, but initial movement to reconsigning point held intrastate.

Central Coml. Co. vs. L. & N. R. R. Co., 27 I. C. C. Rep. 114, 116.

§ 14. Carrier is Entitled to Cost of Rendering Reconsignment Service.

A carrier is entitled to the repayment of the cost of reconsignment service, together with a reasonable profit on that cost.

Detroit Traf. Assn. vs. L. S. & M. S. R. Co., 21 I. C. C. R. 257, 262.

See citations of cases appended to Sect. 3 hereof.

§ 15. In Absence of Reconsignment Privilege Local Rates Applicable.

In the absence of the reconsignment privilege the local rate to the billed destination, plus charges from that point, must be applied rather than through rate from point of origin.

Floridin Co. vs. S. A. L. Ry. Co., 21 I. C. C. R. 610.

§ 16. Discrimination in Reconsignment Privileges.

The granting of a reconsignment privilege is a concession voluntarily made by the carrier, but it must be uniformly accorded the shippers and without undue discrimination or advantage.

Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. Rep. 451, 455.

Dietz Lumber Co. vs. A. T. & S. F. Ry. Co., 22 I. C. C. Rep. 75, 76.

Am. Hay Co. vs. L. V. R. R. Co., 21 I. C. C. Rep. 166, 169.

Sinclair & Co. vs. C., M. & St. P. Ry. Co., 21 I. C. C. Rep. 490, 502.

Duncan & Co. vs. N. C. & St. L. Ry. Co., 21 I. C. C. Rep. 186.
Colorado Coal Traffic Assn. vs. C. & S. Ry. Co., 19 I. C. C. Rep. 478.

Cedar Hill Coal & Coke Co. vs. C. & S. Ry. Co., 17 I. C. C. Rep. 479, 487.

Cedar Hill Coal & Coke Co. vs. C. & S. Ry. Co., 16 I. C. C. Rep. 387, 393.

Sunnyside Coal Mining Co. vs. D. & R. G. R. R. Co., 16 I. C. C. Rep. 558.

§ 17. Effect of Misrouting Resulting in Loss of Privilege.

The Commission awarded damages where shipper was deprived of a reconsignment privilege as a result of carrier's misrouting.

Gibson Fruit Co. vs. C. & N. W. R. Co., 21 I. C. C. R. 644, 645.
Whaley-Warren Lbr. Co. vs. C. C. & O. R. Co., 21 I. C. C. R. 530.

Crescent Lumber Co. vs. I. C. R. Co., 20 I. C. C. R. 228.

§ 18. Carrier May Limit Number of Free Reconsignments.

A carrier may limit the number of free reconsignments permitted on any car.

Crescent Coal & Mining Co. vs. B. & O. R. Co., 20 I. C. C. R. 559, 570.

§ 19. Failure of Connecting Line to Observe Reconsignment Directions.

Connecting line, failing to observe reconsignment order, liable in reparation for misrouting.

Noble vs. J. L. C. & E. R. R. Co., 20 I. C. C. R. 520.

§ 20. Forty-Eight Hour Limitation of Reconsignment Not Unreasonable—Generally.

Limitation to first 48 hours after arrival of car of privilege of reconsignment is not unreasonable; in fact need of such limitation to prevent use of car for storage purposes is recognized.

Dietz Lbr. Co. vs. Atchison, Etc., Ry. Co., 22 I. C. C. R. 75, 76.

At the present time the National Code of Demurrage Rules provides for twenty-four hours free time on shipments held for reconsignment or reshipment, and the

practice of carriers generally is to uniformly apply this rule.

National Car Demurrage Rules, Rule 2, Sect. 3, Par. 2.
In re Advances in Demurrage, 25 I. C. C. Rep. 314, 316.

§ 21. Order Shipments.

The right of reconsignment is in the lawful holder of the original bill of lading, and in the case of order shipments the consignee could not exercise a privilege of reconsignment until he became the lawful holder of the original bill of lading, and until such time the right of reconsignment remains in the consignor.

Commercial Club of Omaha vs. A. & S. R. Ry. Co., 27 I. C. C. Rep. 302, 320.

CHAPTER IX.

DEMURRAGE CHARGES AND RULES.

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CHAPTER IX.

DEMURRAGE CHARGES AND RULES.

§ 1. General Nature of Demurrage.

"Demurrage" is a charge assessed against the shipper of a two-fold nature: (1) To insure prompt receipt by the consignee of his freight and the consequent release of the equipment, and (2) as compensation to the carrier for the additional services afforded the shipper who allows his consignment to remain in the car beyond the free time allowed for unloading. In the first instance it is a penalty; in the second, a rental of the car. Under the maximum of the Act to Regulate Commerce that the charge of the carrier shall at all times be reasonable and have relation to the cost and value of the service, it necessitates a humorous stretching of the imagination to comprehend the usual demurrage charge of \$1.00 per day per car as a rental charge. The demurrage charge is ridiculously in excess of the customary rental value of off-line equipment which has, for many years, been considered at 20 cents per car per day, and only recently raised to 50 cents per car per day, but nevertheless such charge is utterly insignificant in comparison with the real rental value of a car computed upon the basis of car revenue or investment in car. In the results it effects, demurrage is strictly a penalty; jurisdictionally it is made to partake sufficiently of the nature of service, both in the use of equipment and its effect upon the aggregate transportation charge, to

render it incidental to the transportation service and cognizable to the regulating power.

§ 2. Origin and Definitions.

Although "demurrage" was first assessed by a railroad in 1874, and not until 1888 uniformly adopted by any number of roads, the term is descriptive of a practice in vogue long prior to the advent of rail transportation. A careless use of the term "demurrage" in connection with railroad transportation has restricted its commonly-accepted meaning to be that of the charge itself. But the term originally had, and still has, if properly defined, a dual sense—in the maritime days, the delay of a vessel in port by the freighter or charterer beyond the last days allowed for loading, unloading or sailing, and the amount due from the freighter or charterer to the owner of the vessel for such detention; (1) at the present time it comprehends both the detention of railroad equipment by the shipper beyond the free time allowed for loading or unloading, and the charge made against the shipper for such detention of the car.

(1) Bouvier's Law Dictionary.

"The delay to the vessel and the payment to be made for it are both called demurrage."

Abbott's Shipping.

"Demurrage is an allowance or compensation to the owner for the delay or detention of a vessel."

The Apollon, 9 Wheat. (U. S.) 362, 6 L. Ed. 111.

The advent of the demurrage practice in connection with rail transportation in this country was the logical result of conditions and abuses entirely attributable to the shippers themselves. Prior to 1888 it was a common practice for a shipper to retain a car for loading or unloading much

at his own pleasure. Particularly in the coal trade, and among large consumers of coal, it was the shipper's design to retain the coal in the carrier's cars until actually sold or consumed in the furnaces. This riotous abuse of equipment necessitated the most drastic means which the carrier might employ to insure the release of its equipment, and the carriers invented no new method, but rather borrowed the "demurrage" penalty of their predecessor-carriers. It was purely and simply a penalty imposed upon the user of the car to stimulate his prompt unloading of his freight and the consequent return of the equipment to the carrier's service.

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 315.

§ 3. Use of Term "Car-Service."

The industrial nomenclature of one decade frequently becomes the commercial language of the ensuing period. Railroad nomenclature has long embraced amongst its multitude of economic-idioms the term "Car-Service Charge." "Car-Service Charge" and "Demurrage" are used synonymously, the former being most used by railroad men and the latter by shippers and the courts. If any distinction were to be made in the two terms, it would be that "car-service charge" is more accurately and technically descriptive of the demurrage charge when treated as car rental or compensation for car service. The term "car-service charge" will be used synonymously with "demurrage" in this volume.

§ 4. The Demurrage Charge.

In speaking of demurrage charges, the Railroad Commission of Ohio said:

"In considering the nature of a car-service charge, it may be well to inquire if such a charge be storage, rental

or a penalty. There are no authorities to support a contention that car-service charge is storage. If it be contended that the car-service charge is car rental, then it must follow that the charge imposed by the rules generally is unreasonable, because a charge of \$1 per day is \$365.00 per year or over 36 per cent of the car value, estimating freight cars to be worth \$1,000. No one would attempt to justify a 36 per cent rental. The charge of 50 cents per day that one railroad pays another for the use of its car is rental, and there could be no argument advanced that would conveniently justify the fairness of charging one party 100 per cent more than another party for the same service, which it would amount to if car-service charge were car rental; especially when the party paying 50 cents per day is subjecting the car to the wear and tear of usage, while the party paying \$1 is not subjecting the car to usage. Let us consider the car-service charge in the nature of a penalty. The railroads declare emphatically that revenue from this source is not the object; that they prefer the cars released; that they are not maintaining car-service bureaus as rental agencies, but as instruments whose function is to reduce car detention to a minimum. The collection of car-service charge is not in itself an end, but only a means to an end; therefore a much larger charge for car detention is imposed than would be justified as rental for storage in order to make it unprofitable for shippers or consignees to detain cars."

Ann. Rep. R. R. Com. of Ohio, for 1907.

The purpose of a demurrage charge and charges of a kindred nature is twofold. In the first place, they are imposed as compensation to the carrier for an additional service. The rate of freight includes a delivery of the property; it does not include the storage of the property

after reasonable opportunity has been afforded the consignee to receive it. When, therefore, the carrier, through failure of the consignee to promptly remove the property is obliged to store the same either in its cars or its warehouses, it performs a service not embraced in the rate and for which additional compensation may properly be exacted.

The demurrage charge is imposed in the second place as a penalty to influence the shipper to promptly unload and release the equipment of the railroad. The railway serves the entire public as a common carrier. In order to do this acceptably it must have the use of its equipment. The whole shipping public is interested in the prompt release of freight cars. It frequently happens that great inconvenience results from the insufficient supply of car equipment, so that it is for the interest of the entire public that cars should be promptly discharged.

N. Y. Hay Exchg. Assn. vs. P. R. R. Co., 14 I. C. C. R. 178, 184, 185.

The proper method of securing the release of cars is by enforcement of fairly constructed car-service rules, and to these and to an increase in efficiency of carriers themselves they must look for relief from intolerable car delays.

Lumber Rates from Memphis and other points to New Orleans, 27 I. C. C. Rep. 471, 479.

While the principle of demurrage had its origin in connection with water transportation, it has become part of the rail transportation practices of the country. The demurrage charge has been held by the Interstate Commerce Commission and the courts to be in part compensation to the carrier for the detention service and in part a penalty to secure the release of equipment and tracks.

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 315.

§ 5. Demurrage Charge a Penalty.

The Interstate Commerce Commission held a demurrage charge of \$1 per car, which is usually assessed by carriers, to be imposed not on the basis of a fair quantum meruit, but as a penalty to secure the prompt release of the car.

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 315.

St. Louis H. & G. Co. vs. M. & O. R. Co. et al., 11 I. C. C. R. 90.

N. Y. Hay Exchg. Assn. vs. P. R. Co., 14 I. C. C. R. 178, 184, 185.

§ 6. Jurisdiction of Interstate Commerce Commission Over Demurrage.

The Commission and the courts having established the fact that demurrage is an incidental part of the transportation service, there can be no doubt of the inclusion of demurrage and demurrage charges within the broad language of the first section of the amended act.

The term "transportation" is defined to include "all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported," and the carriers subject to the act are required to establish, observe and enforce just and reasonable regulations and practices affecting all matters relating to or connected with the receiving, handling, transporting, storing and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation and delivery of property subject to the provisions of this act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation and practice with reference to

commerce between the states and with foreign countries is prohibited and declared to be unlawful.

Act to Reg. Com. (Amd. 1910), Sect. 1, Pars. 2 and 3.

It is unnecessary to decide that the federal authority over this subject is exclusive, inasmuch as Congress has taken definite action and removed the subject altogether from the field of state regulation. The power of Congress to act with reference to this subject is indisputable; that Congress has made provision for the regulation of these charges is just as clear.

Wilson Produce Co. et al. vs. P. R. R. Co., 14 I. C. C. R. 170, 174.

The act requires that carriers shall publish, post and file "all terminal charges . . . which in any wise change, affect or determine . . . the value of the services rendered to the passenger, shipper or consignee," and all such charges become a part of the "rates, fares and charges" which the carriers are required to demand, collect and retain. Such terminal charges include demurrage charges.

On March 16, 1908, the Commission decided that demurrage rules and charges applicable to interstate shipments are governed by the Act to Regulate Commerce, and therefore are within its jurisdiction and not within the jurisdiction of state authorities. Any other view would open a wide door for the use of such rules and charges to effect the discriminations which the act prohibits. (Reaffirming Conf. Rulings Bull. No. 5, Ruling No. 54.)

Demurrage rules and charges must be observed as strictly as transportation rules and charges. The Commission can not, therefore, recognize as lawful any rule governing demurrage the application of which is dependent upon the judgment or discretion of some person, or which provides for exemption therefrom in certain

exigencies in the creation of which the carrier has no part.

Conf. Rulings Bull. No. 5, Ruling No. 223-(a)-(b)-(c).
Rule No. 75 of Tariff Circular No. 18-a.

For the constitutional power of Congress to regulate demurrage rules and regulations, and charges, see—

Wilson Produce Co. et al. vs. P. R. R. Co., 14 I. C. C. R. 170.
Rhodes vs. Iowa, 170 U. S. 412, 42 L. Ed. 1088.
Bowman vs. C. & N. W. R. Co., 125 U. S. 465, 31 L. Ed. 700.
McNeill vs. So. R. Co., 202 U. S. 543, 50 L. Ed. 1142.
Lumber Rates from Memphis and other points to New Orleans, 27 I. C. C. Rep. 471, 479.
Alan Wood Iron & Steel Co. vs. P. R. R. Co., 24 I. C. C. Rep. 27.
Joynes vs. P. R. R. Co., 17 I. C. C. Rep. 361, 369.

The Commission approved the National Code of Demurrage Rules, but did not prescribe them. Neither was the code of rules prepared by the carriers, but by the National Association of Railway Commissioners.

§ 7. State Regulations Governing Demurrage in Conflict with Federal Authority.

While the Supreme Court of the United States has permissively ruled that in the absence of Congressional action the state may regulate those matters which are of strictly local effect, even though incidentally such state regulations may affect interstate commerce, it has also held that "whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

Cooley vs. Board of Wardens, 12 How. (U. S.) 299, 13 L. Ed. 996.

It is unnecessary to decide that the federal authority

over this subject is exclusive, inasmuch as Congress has taken definite action and removed the subject altogether from the field of state regulation. Beyond all possibility of a doubt, therefore, the duty of regulating terminal charges when related to interstate transportation, has been lodged with the Interstate Commerce Commission, and federal courts have so held.

United States vs. Standard Oil Co., 148 Fed. Rep. 719, 722.

Michie vs. New York, New Haven & Hartford R. R. Co., 151 Fed. Rep. 694, 695.

The power of Congress to act with reference to this subject is indisputable; that Congress has made provision for the regulation of these charges is just as clear; and it follows necessarily that a state law which conflicts with the federal statute must give way.

Interstate Commerce Commission vs. Detroit, Etc., Ry. Co., 167 U. S. 633, 642.

Gulf, Colorado, Etc., Ry. vs. Hefley, 158 U. S. 98.

The authority expressly conferred upon the Interstate Commerce Commission would be nugatory if the concurrent authority of the state were recognized. Federal authority over demurrage and track storage charges in connection with interstate commerce, can not be challenged.

Wilson Pro. Co. et al. vs. P. R. R. Co., 14 I. C. C. R. 170, 174.

In the Wilson Produce Company case the Commission held a Pennsylvania statute to be in interference with the federal authority which provided for maximum car-service charges, upon the ground that track storage charges, when associated with an interstate movement, appertain directly to interstate commerce. They represent the carrier's compensation for services rendered in connection with the transportation. A shipment is not completed until

arrival at destination and delivery to the consignee; and the authority vested in Congress by the commerce clause of the Constitution covers everything related to the delivery of freight transported between the states.

Citing—

Rhodes vs. Iowa, 170 U. S. 412, 426.

Bowman vs. C. & N. W. R. Co., 125 U. S. 465.

McNeill vs. So. Ry. Co., 202 U. S. 543, 559.

Compare—

I. C. C. vs. Detroit, Grand Haven & Milwaukee R. Co., 167 U. S. 633, holding cartage charges included in "transportation" charge.

See also—

Ann Arbor R. Co. et al. vs. R. R. Com. of Ohio, 8 Nisi Prius Report, 233.

It must be understood, however, that such state statutes regulating demurrage rules and charges are valid and enforceable as to intrastate traffic.

P. R. Co. vs. Coggins, 38 Pa. Sup. Ct. Rep. 129.

See—

Sargent vs. Rutland R. R. Co., 85 Atl. Rep. 654, 659, holding state statute void as to parts in conflict with National Demurrage Code approved by Interstate Commerce Commission.

§ 8. Carriers Required to Collect Demurrage Charges.

Railroads are carriers, not warehousemen. It is no part of their present duty to furnish storehouses in which to store the goods they carry, although legal authorities differ as to the obligations of the carriers in this particular and the matter has not, as yet, been finally settled by the courts. The purpose of a demurrage charge and charges of a kindred nature is twofold. In the first place they

are imposed as compensation to the carrier for additional service. The rate of freight includes a delivery of the property; it does not include the storage of the property after reasonable opportunity has been afforded the consignee to receive it. When, therefore, the carrier, through failure of the consignee to promptly remove the property, is obliged to store the same either in its cars or its warehouses, it performs a service not embraced in the rate and for which additional compensation may properly be exacted.

The demurrage charge is imposed in the second place as a penalty to influence the shipper to promptly unload and release the equipment of the railroad. The railway serves the entire public as a common carrier. In order to do this acceptably it must have the use of its equipment. The whole shipping public is interested in the prompt release of freight cars. It frequently happens that great inconvenience results from the insufficient supply of car equipment, so that it is for the interest of the entire public that cars should be promptly discharged.

N. Y. Hay Exchg. Assn. vs. P. R. R. Co., 14 I. C. C. R. 178, 184, 185.

The law does not require a carrier to give its cars and tracks under any terms for use as warehouses or places of business. After allowing a reasonable time for unloading cars, a carrier may impose such charges for further detention as will lead to the speedy release of its equipment. A carrier has a right to impose such charges at its produce terminal as will render that terminal available for the purpose for which it was intended.

Wilson Prod. Co. et al. vs. P. R. R. Co., 16 I. C. C. R. 116.

A railroad company is a common carrier. Its duty is to transport freight to destination and deliver it to the con-

signee. It is the duty of the consignee to receive his freight within a reasonable time and if he neglects to do so the liability of the railroad company as a common carrier ceases and it becomes simply a warehouseman, although here again it may be stated that the status of the railroad has not, as yet, been definitely determined by the court. However, at present the railway is under no legal liability to continue to discharge the duties of a warehouseman but may insist that the consignee shall receive and remove his freight. The consequences to the railway of neglect to do this are not merely in case of carload freight the loss of the use of the car. The uncertainty arising from the fact that cars are sometimes unloaded promptly and sometimes not is embarrassing. The congestion of its terminals is often and perhaps usually a more serious matter than the loss of its cars. It would be not only much more expensive, but often impossible for the railways of this country to handle their traffic at many points unless they required the prompt removal of the freight from the car. To permit one person to use the cars of a railroad company for a storehouse and to deny that privilege to another creates a discrimination between shippers which is often serious. For these reasons and others it is not only proper but highly essential that railroad companies should make and enforce uniformly such reasonable demurrage requirements as will insure the prompt receipt by the consignee of his freight. The demurrage charge which is imposed for that purpose is not, however, based upon the fair rental value of a car; it is in the nature of a penalty. While it should not be sufficient in amount to work a hardship upon the shipper who must occasionally pay it, it should be sufficient in amount to accomplish the purpose for which it is intended. One dollar per day is the demurrage charge universally

named by car-service associations in all parts of this country in case of carload freight, and the same amount is generally if not uniformly fixed by railroad commissions invested with power to make rates and regulations.

Kehoe vs. C. & W. C. Co. et al., 11 I. C. C. R. 166.

St. Louis H. & G. Co. vs. M. & O. R. Co. et al., 11 I. C. C. R. 90.

Ann. Rep. of R. R. Com. of Ohio, for year 1907.

See also—

Pine Belt Lumber Co. vs. G. & S. I. R. R. Co., 33 I. C. C. Rep. 117, 118.

Industrial Rys. Case, 32 I. C. C. Rep. 129, 133.

Internl. Agricultural Corp. vs. A. & W. P. R. R. Co., 32 I. C. C. Rep. 199, 201.

Mobile Chamber of Commerce vs. M. & O. R. R. Co., 32 I. C. C. Rep. 272, 281.

Crows Nest Pass Coal Co. vs. G. N. Ry. Co., 32 I. C. C. Rep. 479, 480.

Industrial Railways Case, 29 I. C. C. Rep. 212, 213, 233, 237.

N. Y. Hay Exchange Assn. vs. L. V. R. R. Co., 29 I. C. C. Rep. 90, 92.

C. & N. W. Ry. Co. Reconsignment Rules, 29 I. C. C. Rep. 620, 621, 622, 623, 624.

Lumber Rates from Memphis and other points to New Orleans, 27 I. C. C. Rep. 471, 478, 479.

Duhlmeier Bros. vs. P. Co., 27 I. C. C. Rep. 4.

Justice Co. vs. P. R. R. Co., 26 I. C. C. Rep. 478, 479.

Deeves Lumber Co. vs. A. & V. Ry. Co., 25 I. C. C. Rep. 42, 43.

Alexander vs. L. Ry. Co., 25 I. C. C. Rep. 32, 34.

Holingshead & Blei Co. vs. P. Co., 25 I. C. C. Rep. 38, 39.

Galveston Commercial Assn. vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 216, 223.

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 315, 316, 324.

Big Muddy Coal & Iron Co. vs. St. L. I. M. & S. Ry. Co., Unreported Op. A-73.

The delivering carrier is under the obligation to collect demurrage charges assessed by it, and the shipper must pay demurrage charges, although such charges may have

accrued as the result of error on the part of another carrier. It is the duty of the delivering carrier to collect, and of the consignee to pay, demurrage charges as per lawful tariffs. Demurrage charges accruing because of error of a carrier are considered in the same light as are other additional transportation charges caused by carrier's error; and if adjusted, the full expense thereof must be borne by the carrier whose agent is responsible for the error. (See Conf. Ruling No. 214.)

The shipper should pay the lawfully published rate via the route over which the shipment moved, pending dispute, and then make claim for refund. The Commission, in the adjustment of misrouting claims, will not ordinarily include demurrage charges, which accrue pending adjustment or subsequent to consignee's refusal to accept the shipment and pay the lawful charges thereon, but in special cases such demurrage charges may be included in the amount of refund. (See Conf. Ruling No. 220-(e).)

When the delivering carrier demands more than the lawful rate, the consignee is released from the obligation to pay demurrage charges accruing during the pendency of the dispute as to the lawful rate.

Conf. Rulings Bull. No. 5, Ruling No. 32, p. 11.

Conf. Rulings Bull. No. 5, Ruling No. 220-(f).

See also Footnote to Conf. Ruling 242. Also Conf. Ruling No. 214.

In the Cudahy Packing Company case the Commission declared that the car-service rules of the defendant provide that no demurrage shall be charged where the same person owns both the track and the car. It may be doubtful what rule ought to be applied when the car is the property of one person and the track the property of another, neither car nor track being owned by the railway. The failure to refer by number to the car-service tariff

in the tariff of rates could in no way relieve the complainant from the payment of demurrage. The car-service tariff was properly filed and posted and was well known to the complainant. It was enforced against the public generally. The tariff of rates did specify that the movement of traffic thereunder would be subject to car service and storage rules, and only those filed and published could apply.

Cudahy Packing Co. vs. C. & N. W. Ry. Co., 12 I. C. C. R. 446, 447.

In a case where if the carrier had demanded only the lawful rate, the refusal of the shipper to pay more than what he claimed to be the contract rate—37 cents—would have relieved the carrier of blame in the subsequent negotiations. Because of this and because the Commission believed its ruling of February 3, 1908 (Conference Rulings, Bulletin No. 6, Ruling No. 32), announced merely what the law had always been, it found that all demurrage and other charges accrued and collected after the shipment reached Bovina were improperly assessed and should be refunded to the shipper. The ruling was:

"When the delivering carrier demands more than the lawful rate, the consignee is released from the obligation to pay demurrage charges accruing during the pendency of the dispute as to the lawful rate."

Porter vs. St. L. & S. F. R. Co., 15 I. C. C. R. 1, 5.

(1) Track-Storage Charge. "Track-storage charge" is a term used synonymously with "car-service charge" or "demurrage charge." It has primary application to car-load shipments standing on track, and as a charge for service would indicate a rental of the track space occupied by the car in the terminal rather than the rental of the car itself. It may, however, apply to cars on track containing

l. c. l. shipments, such as "trap-cars." Within the last year and a half this term has come to have a definite meaning of "track rental" and is applied in addition to the customary "car-service" or "demurrage" charge, and tariffs are being issued applicable at many points throughout the country definitely providing for this charge in addition to the demurrage charge. It is usually \$1.00 per car per day.

See *Murphy Bros. vs. N. Y. C. & H. R. R. R. Co.*, 33 I. C. C. Rep. 355, 356.

(2) Demurrage Rules, Regulations, and Charges, Must be Published in Carrier's Tariffs. Each carrier subject to the act is required to publish, post and file with the Commission all terminal charges which in any wise change, effect or determine any part or the aggregate of the rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee.

Act to Reg. Com. (Amd. 1910), Sect. 6, Par. 1.

And such terminal charges include demurrage regulations and charges.

Conf. Rulings Bull. No. 6, Ruling No. 223, May 12, 1908.

Rule No. 75, Tariff Circular No. 18-A.

See also Conf. Rulings Bull. No. 6, Ruling No. 276, April 4, 1910.

§ 9. Shipper Must Pay Demurrage Charges.

It is the duty of the shipper, under the act, to pay lawfully assessed demurrage charges.

§ 10. Methods of Imposing Demurrage Rules and Charges.

Demurrage rules and charges are applied under three distinct methods or plans:

- Straight Demurrage;
- Average Demurrage; and
- Reciprocal Demurrage.

(1) Straight Plan of Demurrage. Straight plan of car-service or demurrage makes a definite allowance for free time and provides a definite sum per day to be charged against shipper or receiver, for detention of cars beyond the free time, for loading or unloading. The car-service rules enforced generally are of this class.

Under the straight plan of demurrage the free time is granted the car rather than to the consignee, the purpose of the demurrage being to penalize the detention of the car beyond that period. The subsequent purchaser should, therefore, have the privileges which belong to the car. The car is entitled to a certain number of days of free time, and that time may not be arbitrarily shortened by carriers simply because the ownership of the shipment in the car has changed. In the case of change of ownership, the free time should follow the car unless such car is subject to the average plan of computing demurrage. (See "Average Plan of Demurrage," following.)

Lynah & Read et al. vs. B. & O. R. R. Co. et al., 18 I. C. C. R. 38, 45.

(2) Average Plan of Demurrage. Average car service credits the shipper and receiver with good time; that is, if he loads or unloads certain cars within the free time, he is credited to offset penalties that may accrue because of detention beyond the free time in loading or unloading certain other cars.

Under a plan of straight demurrage the free time is granted to the car, the purpose of demurrage being to penalize the detention of the car beyond that period, but, under the average plan, the free time is granted to the consignee. Shippers who execute and use the average agreement are given the same rights and credits in connection with a car which they sell or reconsign as on one

that is unloaded. The Commission holds, therefore, that it is not an unreasonable rule to close the free time at time of reconsignment or when sale is consummated and ownership of the shipment passes to new consignee, where the original consignee is operating under the average plan.

Lynah & Read, et al. vs. B. & O. R. R. Co. et al., 18 I. C. C. R. 38, 45.

Alan Wood, Iron & Steel Co. vs. P. R. R. Co., 24 I. C. C. Rep. 27, 28.

Galveston Commercial Assn. vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 216, 231.

The "average plan" is provided for under the following rule and agreement in the National Code of Demurrage Rules:

"When a shipper or receiver enters into the following agreement, the charge for detention to cars, provided for by Section A of Rule 7, on all cars held for loading or unloading by such shipper or receiver shall be computed on the basis of the average time of detention to all such cars released during each calendar month, such average detention to be computed as follows:

"Section A—A credit of one day will be allowed for each car released within the first twenty-four hours of free time (except for a car subject to Rule 2, Sect. B, Par. 5). A debit of one day will be charged for each twenty-four hours or fraction thereof that a car is detained beyond the free time. In no case shall more than one day's credit be allowed on any one car, and in no case shall more than five (5) days' credit be applied in cancellation of debits accruing on any one car. When a car has accrued five (5) debits, the charge provided for by Rule 7 will be made for all subsequent detention, including Sundays and holidays.

"Section B—At the end of the calendar month the total number of days credited will be deducted from the total number of days debited, and \$1.00 per day charged for the remainder. If the credits equal or exceed the debits, no charge will be made for the detention of the cars, and no payment will be made to shippers or receivers on account of such excess of credits, nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month.

"Section C—A shipper or receiver who elects to take advantage of this average agreement shall not be entitled to cancellation or refund of demurrage charges under Section A, Paragraphs 1 and 3, or Section B of Rule 8.

"Section D—A shipper or receiver who elects to take advantage of this agreement may be required to give sufficient security to the carrier for the payment of balances against him at the end of each month.

AGREEMENT.

"To.....Rail.....Company:—

"Being fully acquainted with the terms, conditions and effect of the average basis for settling for detention to cars as set forth in.....being the car demurrage rules governing at all stations and sidings on the lines of said rail.....company, except as shown in said tariff, and being desirous of availing (myself or ourselves) of this alternate method of settlement (I or we) do expressly agree to and with the.....Rail.....Company that with respect to all cars which may, during the continuance of this agreement, be handled for (my or our) account at.....(Station), (I or we) will fully observe and comply with all the terms and conditions of said rules as they are now published or may hereafter be lawfully modified by duly published tariffs, and will make prompt

payment of all demurrage charges accruing thereunder in accordance with the average basis as therein established or as hereafter lawfully modified by duly published tariffs.

"This agreement to be effective on and after the..... day of.....19.., and to continue until terminated by written notice from either party to the other, which notice shall become effective on the first day of the month succeeding that in which it is given.

.....
 "Approved and accepted.....by and on behalf of the above named railroad company by.....

EXCEPTION.

"Section A of Rule 9 will not apply on intrastate traffic in Nebraska. In lieu thereof, Section A-1 will apply.

"Section A-1—(Applicable on intrastate traffic in Nebraska only.)

"A credit of one day will be allowed for each car released within the first twenty-four hours of free time. A debit of one day will be charged for each twenty-four hours or fraction thereof that a car is detained beyond the first forty-eight hours of free time. In no case shall more than one day's credit be allowed on any one car, and in no case shall more than seven (7) days' credit be applied in cancellation of debits accruing on any one car." (Nebraska State Railway Commission, Application No. 1540.)

Michigan Mfrs. Assn. vs. P. M. R. R. Co., 31 I. C. C. Rep. 329, 336.

Picher Lead Co. vs. St. L. & S. F. R. R. Co., 35 I. C. C. R. 45, 46.

Conference Ruling No. 409 provides that no agreement made under the uniform demurrage rules may properly combine in one account the cars of more than one consignee; each average agreement must cover the business

- of one consignee only. Demurrage agreements may not lawfully be made with draymen or with public elevators serving the various consignees.

This rule is not intended to prohibit the application of the average agreement at a public elevator or warehouse so far as it applies to cars consigned to the elevator or warehouse company.

This ruling is amplified by Conference Ruling No. 463, which provides that a storage warehouse company which is specifically designated as the consignee of carloads of miscellaneous freight, the property of others, and which company is responsible for the unloading and for the detention of cars so received, may be made the subject of the average demurrage rule. Cars arriving otherwise consigned and afterwards ordered to the warehouse for storage may not be included under the average agreement with the warehouse company.

. I. C. C. Confr. Rulings Bull. No. 6, Ruling Nos. 409 and 463.

(3) Reciprocal Plan of Demurrage. Reciprocal car service is an attempt to balance the delinquencies of carrier and shipper by the use of reciprocal penalties. It provides that for delay in placing a car for loading or unloading the carrier shall forfeit for each day of such delay a sum equal to that assessed against the receiver or shipper for undue detention after placing. To illustrate: Working under a reciprocal car-service arrangement, "A" orders a car for loading; if it be not placed for him until five days after order has been given, the railroad company credits him with three days' car service; the carrier being allowed the same free time as is usually allowed the shipper. In the event "A" is assessed for detention of cars, this credit is applied. In some places reciprocal car service goes

further and even assumes to penalize the carrier for delays in transit.

Ann. Rep. of R. R. Com. of Ohio, for year 1907.

A. T. & S. F. Ry. Co. vs. J. B. Vosburg, 238 U. S. 56.

In re Advances in Demurrage Charges, 25 I. C. C. Rep. 314, 321.

(4) The Interstate Commerce Commission on Reciprocal Demurrage. At the time of the car-shortage investigation in the northwest, insistent advocacy was made by shippers of a reciprocal plan of demurrage wherein both the carrier and shipper should become responsible for the proper release and furnishing of cars. In its report of its investigation, the Commission commented on the proposed reciprocal demurrage plan, as follows:

“The most generally advocated remedy for the failure on the part of carriers to furnish cars when demanded is that now generally known as ‘reciprocal car demurrage.’ This phrase means, in a word, that carriers shall be penalized upon failure to furnish cars demanded, and the phrase arises out of the universal railroad practice of imposing a per diem penalty when a car is held for unloading beyond a certain fixed number of days.

“‘It is but equitable,’ the shipper urges, ‘that if the railroad may charge me for holding its car because that car is needed by it in the conduct of its business that I should be permitted to charge it a stated sum per day when it fails to deliver to me a car which is necessary to the conduct of my business.’

“The carrier disavows any intention to profit by the delay of the consignee in unloading his freight, but justifies its demurrage rule upon the ground that only by such charge can the consignee be led promptly to free equipment. The shipper in turn urges that such reciprocal

demurrage as might be exacted would not compensate it for the loss of the car at the time needed, but is intended rather to stimulate the railroad into more promptly providing the car which it is its legal duty to furnish.

"Some commercial bodies, advocating this general principle, favor the enactment of a law by Congress dealing directly with the subject, while others favor an enlargement of the powers of the Interstate Commerce Commission under which this body shall have authority to make proper and necessary rules, which may be enforced through the courts under penal provisions similar to those now incorporated in the act to regulate interstate commerce. Each method of procedure has been followed in the legislation of the states. The statute of Texas is an illustration of one method, and the rules framed by the commissions of Louisiana, Florida, Mississippi, North Carolina and Virginia are illustrations of the other.

"It is to us evident and beyond all controversy that the difficulties with which the business of transportation is affected in this country at the present time would not be overcome by the enactment of a reciprocal demurrage bill alone if such measure merely provided for punishing the railroad for nonplacing of cars or nonmovement thereof. The problem is one much deeper and much broader than a mere lack of cars and engines. No doubt an inadequate supply of these facilities is the cause of all the troubles which beset the shipping public on certain lines. But these instances are few. The problem of car shortage is one in which is involved every factor in railroading—the construction, the operation, the maintenance and the financing of the railroads. The inability of the shipper to secure a car may be but a symptom of a deep-seated and organic trouble.

"The real cause of a car shortage may lie in the too con-

servative character of the management of the road or in the unfitness and incompetency of its operating officials. It may flow from an incomprehension on the part of the directors of the full duty imposed by law upon a common carrier. It may arise out of a policy in railroad operation which gives primary consideration to speculative stock operations. It may come from an inability to secure funds to so fit itself that it can discharge its duty. It may follow in a time of exceptional prosperity from an increase in traffic which could not reasonably have been anticipated. Or it may result from an inability to secure labor and materials necessary to the proper enlarging of the railroad's facilities. This enumeration of causes is not exhaustive. It could not well be complete without giving consideration to many industrial and economic factors which at first glance would appear remote and unrelated. Clearly the problem of transportation is so closely interwoven with the fabric of our commercial system, and so closely related and so interdependent are the various activities of our industrial life that one may not lightly say what are the multitudinous considerations which necessarily enter into so simple a question as the reason why a railroad car is not at once forthcoming when ordered.

"The enactment of a reciprocal demurrage bill will not build railroad track, equipment, enlarge and simplify terminals, nor transform incompetent operating officials into first-class railroad men, but it might stimulate, energize and in some cases revolutionize the methods of delinquent railroads so that they would render the service which they were created to render. This is the theory of reciprocal demurrage. But that of itself it will enable the railroads to render adequate service is not demonstrated by experience.

"Perhaps the most serious congestion that exists at any terminal in the United States today is to be found in Galveston—in a state suffering seriously from car shortage, but in which there is on the statute books one of the simplest reciprocal demurrage laws to be found in the United States. In a statement by Hon. O. B. Colquitt, of the railroad commission of Texas, is found this pregnant passage:

"We have a law in Texas which provides that shippers may make statutory requisition for cars, depositing one-fourth of the freight charge from point of origin of the freight to its destination, and when such requisition is made the car must be furnished within a specified time or else the railroad company must pay to the party making the requisition demurrage at the rate of \$25 per day. This demurrage is reciprocal, and where the shipper or the consignee does not unload such cars within forty-eight hours after same is delivered demurrage at the rate of \$25 a day runs against the consignee.

"Our court of civil appeals in suits brought by individuals for damages has held that under this law the railroad company can not be compelled to furnish cars for loading where the destination of shipment is beyond the line of the originating road. Acting under this construction of the law the Texas railroads are refusing to furnish cars to be loaded when the destination of the shipment is beyond their line. When shipments are accepted the cars are held at junction points where the originating line requires loads to be transferred or their connecting line to furnish them with an empty car for every loaded car so tendered at such junction points. The result is that at junction points there are many cars tied up with loads waiting for transfer or exchange of an empty.

"The great quantity of commerce going to the port

of Galveston from the interior of Texas, as well as from Oklahoma, Kansas and Nebraska, much of which is originated on railroads that terminate in the interior and have to depend on their connections reaching Galveston to make port delivery, and the originating lines refusing to let their loaded cars go to port destinations, thus forcing the unloading of such cars at interior junction points, first produced a blockade of cars at such points, and so tied up several thousand cars on side tracks in enforced idleness beyond the length of time which it would have required such cars to be transported to destination and returned.'

"This congestion at junction points soon extended to Galveston, where it was aided greatly by a new policy which the Texas roads had adopted of shipping cotton to the port in mixed consignments, thus necessitating the unloading and sorting of such shipments, before delivery could be made.

"Manifestly it is of little value to a shipper to be given a car if that car, when loaded, is not moved promptly to destination. Therefore the conclusion is inevitable that reciprocal demurrage alone will not insure better railroad service when the movement is over more than one system of railroad. Such a law or rule must be supplemented by some other rule or law under which the originating carrier may be insured of prompt return of the cars which it delivers to its connections.

"The traffic of this country can not be moved in the fashion which obtained in the early days of railroading, when transfers were universal at junction points. When the railroad is penalized for not placing a car at a shipper's warehouse or elevator it will protect itself against the loss of that car by refusal to permit it to pass beyond its control unless it can be given another car in its stead,

or unless some system is devised similar to that of the car pool under which its needs for cars may be promptly met.

"It will profit those who are seeking to remedy the shortage in car service by means of the imposition of reciprocal demurrage to consider well the decision of the United States Supreme Court in *Houston & Texas Central Railroad Company vs. Mayes*, 201 U. S. 321. This case involved the applicability of the Texas law to interstate commerce. Mr. Justice Brown, in delivering the opinion of the court, said:

"While there is much to be said in favor of laws compelling railroads to furnish adequate facilities for the transportation of both freight and passengers and to regulate the general subject of speed, length, and frequency of stops, for the heating, lighting, and ventilation of passenger cars, the furnishing of food and water to cattle and other live stock, we think an absolute requirement that a railroad shall furnish a certain number of cars at a specified day, regardless of every other consideration except strikes and other public calamities, transcends the police power of the State, and amounts to a burden upon interstate commerce. It makes no exceptions in cases of a sudden congestion of traffic and actual inability to furnish cars by reason of their temporary and unavoidable detention in other States, or in other places within the same State. It makes no allowance for interference of traffic occasioned by wreck or other accident upon the same or other roads, involving a detention of traffic, the breaking of bridges, accidental fires, washouts, or other unavoidable consequence of heavy weather.

"While railroad companies may be bound to furnish sufficient cars for their usual and ordinary traffic, cases

will inevitably arise where, by reason of an unexpected turn in the market, a great public gathering, or an unforeseen rush of travel, a pressure upon the road for transportation facilities may arise which good management and a desire to fulfill all its legal requirements can not provide for and against which the statute in question makes no allowance.

“‘Although it may be admitted that the statute is not far from the line of proper police regulation, we think that sufficient allowance is not made for the practical difficulties in the administration of the law and that, as applied to interstate commerce, it transcends the legitimate powers of the legislature. (Mr. Justice White not participating; the Chief Justice, Mr. Justice Harlan and Mr. Justice McKenna dissented.)’

“There is nothing in this decision which justifies the conclusion that a reciprocal demurrage bill or rule governing interstate commerce can not be so drawn as to come within the ruling of the court and the principles declared in the opinion of the learned justice. Clearly, however, in justice to the carriers and in conservation of all the industrial interests of the country which use the railroads, whatever plan may be adopted to penalize the railroads for the nonfurnishing of cars must be supplemented by some provision of law or plan of cooperative operation by which the railroads may be secure in permitting cars to pass to the tracks of connecting lines. If this be not done each carrier will live unto itself and will find it to its own interest to confine its cars to its own tracks.

“If the Interstate Commerce Commission is to be vested with power to make rules under which railroads shall be required upon penalty to furnish cars to shippers, this Commission should also be empowered to make rules under which free interchange of cars shall be effected or to

require railroads engaging in interstate commerce to make such rules for their own protection and provide for their enforcement. . . .”

(From supplemental report of Commissioner Harlan:)

“The efficacy of the proposed reciprocal demurrage legislation was not satisfactorily demonstrated by the witnesses who appeared before us. In my judgment, such a measure ought to have very full consideration before being enacted. It seems not improbable that if the railroads are penalized by Federal legislation for failing to supply cars for interstate commerce, the local commerce of the States in times of stress may be wholly neglected by the carriers in order to avoid such penalties, unless the Federal legislation is promptly followed by State legislation of the same nature. Such legislation without providing also for the compulsory interchange of cars would tend to compel carriers to keep all their cars on their own tracks in order to avoid demurrage penalties, and thus break up the advantages now enjoyed by shippers of through transportation. Some railroad men of prominence appearing before us seemed to think that the more effective regulation of the interchange of cars by carriers would of itself go far toward remedying the present car shortage. There seem to be strong reasons for thinking that the proposed car pool or car clearing house would result in a more effective car service. If some such adjustment can not be reached by the companies themselves, it may be that legislation will become desirable and necessary.”

In the Matter of Car Shortage and Other Insufficient Transportation Facilities, 12 I. C. C. R. 561, 574.

The reciprocal feature of the California state demurrage rule, imposing penalties upon the carriers for failure to supply cars upon demand of shippers, was under investi-

gation by the Interstate Commerce Commission in I. & S. Dockets Nos. 83 and 83-A. The report of the Commission is enlightening upon the result of high-pressure demurrage, and comprehensive of the reciprocal feature in demurrage. The Commission said:

"The general and almost universal rule is that carload freight shall be loaded by the shipper and unloaded by the consignee. The rate contemplates a certain free time, usually 48 hours from the time the car is placed for loading, within which to load it, and the same free time for unloading after the car has been placed for unloading. If the car is not loaded or unloaded within the so-called free time demurrage is charged, usually at the rate of \$1 per day on interstate traffic.

"The principle of demurrage doubtless had its origin in connection with transportation by water. The one who chartered a vessel and who failed to provide cargo within a certain time was obliged to pay demurrage for the delay to the vessel. In applying this principle on railroads the demurrage charge has been held by this Commission and by the courts to be in part compensation to the carrier and in part a penalty to secure the release of equipment and tracks.

"In *New York Hay Exchange Asso. vs. P. R. R. Co.*, 14 I. C. C. 178, and in *Wilson Produce Co. vs. P. R. R. Co.*, 14 I. C. C. 170, we approved track-storage charges assessed by the carriers as a penalty in addition to the demurrage because of the disposition of shippers to hold their cars under demurrage on the tracks of the carriers, thus precluding the possibility of using those tracks for other cars.

"In *Kehoe vs. C. & W. C. Ry. Co.*, 11 I. C. C. 166, we said that it is the duty of the railroad to transport freight to its destination and there deliver it to the consignee; that it is the duty of the consignee to receive such freight

within a reasonable time, and that if he neglects to do so the liability of the railroad as a common carrier ceases and it becomes a warehouseman; that the railroad is under no legal liability to continue to discharge the duty of warehouseman, but may insist that the freight shall be removed by the consignee. We found that the congestion of terminals is often, if not generally, a more serious matter than the detention of the cars; that it would be not only much more expensive but often impossible for the railways to handle other traffic unless they required prompt release of cars, and that to permit one person to use the cars for storage purposes and deny that privilege to another creates a serious discrimination between shippers. We said that the demurrage is not to be based upon a fair rental value of the car, but is rather in the nature of a penalty, and that such charge should not be sufficient in amount to work undue hardship upon the one who occasionally has to pay it, but should be sufficient to accomplish the purpose for which it is intended.

"The railroad is able to serve the public only when its cars are used for moving freight, and can satisfactorily and properly serve the public only when its tracks are available for reasonably prompt delivery of freight. The shipper or consignee who at a time of demand for transportation, which taxes the facilities of the carriers, delays cars and occupies tracks beyond the free time contemplated in the freight rate, inflicts loss not only upon the carrier but upon other shippers or receivers who desire to use the carrier's facilities. In the report of the committee on car demurrage to the National Association of Railway Commissioners at its convention in 1909 it is said:

"If the farmer can not get box cars in which to send his grain or cotton to market, the responsibility often rests

with the consignee at the seaboard or in some manufacturing district. If the coal mine can not get cars to fill its orders, it is more than probable that thousands of cars loaded with coal are held in various distributing centers awaiting favorable markets. These illustrations are not hypothetical; they are drawn from everyday experience and clearly demonstrate the harm that may be done the public through the undue detention of cars.'

"Many commodities are forwarded steadily from points of production when final destination is not known and are distributed to various destinations under reconsigning privileges. In some instances these privileges have been carried to such an extent as to form a real abuse. Our attention was recently called to one instance in which a car of coal was reconsigned 15 times. Within reasonable limits these privileges are, we think, necessary and proper, because they afford a more even flow of certain important commodities from points of production and a more prompt delivery at final destination, as well as more equitable distribution in time of need.

"Prior to June 19, 1909, the demurrage rate in California was \$1 per car per day on both state and interstate traffic. On the date mentioned a state statute containing a reciprocal feature fixed the demurrage rate on state shipments at \$6 per car per day. This rate was continued in force until May 1, 1911, at which time it was superseded by a rate of \$3 per car per day under an order of the California Railroad Commission. On January 29, 1912, supplement 5 to Pacific Car Demurrage Bureau's tariff, Mote's I. C. C. No. 11, was issued providing an increase in the demurrage charge on interstate shipments to \$3 per car per day. By order of February 28, 1912, that schedule was suspended to July 6, 1912. The item which provided for the increased charge was reissued in succeed-

ing supplements, which necessitated additional suspensions, and in that way the suspension has been extended to May 2, 1913. It is therefore seen that from January 19, 1909, until May 1, 1911, the demurrage charge on state traffic in California was \$6 and on interstate shipments \$1 per car per day, and that from May 1, 1911, to the present time the charge on state shipments has been and is \$3 and that upon interstate shipments \$1 per car per day.

"In undertaking the burden of showing that the proposed increased charge is reasonable, respondents presented numerous shippers and receivers who testified that experience has shown that there is a direct relation between a high demurrage rate and a sufficient car supply; that since the higher charges on state shipments have been in effect there has been a marked improvement in the ability of the carriers to furnish cars and conduct transportation; and that the higher charge has not been a burden upon the shipping public, but, on the contrary, has been a decided advantage. Some of these witnesses testified that they would prefer to see the demurrage rates increased on both state and interstate traffic rather than to see either reduced. They testified that the \$1 charge is insufficient to secure the release of cars; that the \$3 charge would not be a burden inasmuch as cars can be released promptly by the exercise of proper diligence on the part of shippers and consignees; that it is no more difficult to promptly unload interstate shipments than state shipments; and that the shipper who is properly equipped need not incur demurrage charges.

"Numerous instances are referred to where consignees have held cars unreasonably because it was cheaper to pay \$1 per car per day demurrage than to promptly unload or rehandle the freight, and such practices are said to render

it impossible for the carriers to meet the requirements of shippers.

"It is suggested that if a carrier needs its cars it has the right to unload them, but it is stated that this is impracticable, and it is obvious that the carrier could not foresee or foretell the intentions and wishes of the consignees, and therefore could not, in a practical or economical way, arrange forces or warehouses for such purposes. The idea of carload rates is that the consignee will unload, and that the freight shipped under such rates will not be required to pass through the carrier's freight houses.

"Respondents assert that the conditions surrounding the handling of freight in California are substantially different from those obtaining in other sections because of the heavy movement of freight either eastbound or westbound at certain seasons. The traffic to and from California balances fairly well for the entire year, but the westbound movement predominates from the latter part of December until June, while from June to December there is a heavy eastbound movement of fruits and other products. It is stated that the demurrage rules are so framed that the shipper or receiver who is provided with reasonable facilities can, by the exercise of ordinary diligence, escape the payment of demurrage altogether, unless it be under some unusual or abnormal conditions. It is therefore urged that no discrimination against California is involved in the higher demurrage charge in California than that in effect at other points, and that if there be any discrimination it is in favor of the California shippers because of the advantages which they secure in the more liberal and certain car supply. When the \$6 demurrage rate went into effect there was considerable feeling against it on part of the public, but as the effect of the higher charge appeared this feeling was substantially removed.

"It appears that the great bulk of the California products moves long distances to eastern states and therefore a large car supply is necessary in order to handle it at all. This traffic moves very largely in refrigerator cars, which in the main are hauled west empty because of the necessity to get them back as soon as possible for reloading. Whenever possible these cars are loaded westbound with commodities which will not injure the cars for their intended uses, and frequently such cars received in California are unduly detained by consignees when the shippers of fruit and other perishable products are anxious to secure them for eastbound loading.

"It is stated that the neighboring states of Arizona, New Mexico, Nevada, and Oregon do not produce commodities in such volume and at such times that they are offered for shipment during short or limited periods as is the case in California, and that because of these dissimilarities the conditions in those states are not fairly comparable with those in California and justify a different demurrage rule in California.

"In addition to the witnesses who were examined, respondents tendered the testimony of numerous others whose testimony would be substantially the same as that of those examined and simply cumulative. They presented the results of a large number of interviews with consignors and consignees, 119 of whom stated that the cars containing state shipments were released more promptly than those containing interstate shipments because of the higher demurrage charge on the state shipments; 63 stated that they had increased their facilities for handling freight, and 55 report that their facilities have not been changed; 10 report that they had been subjected to increased expenses which are greater than the amount of demurrage previously paid under the \$1 rate, and 85

report that they have experienced no such increase in expense; 67 report that they have had less difficulty in securing cars for loading than under the previous \$1 rate on state shipments; 58 state that the service rendered by the carriers is better than formerly; 28 report that there is no difference in the service, and 2 assert that the service is worse.

"The Pacific Car Demurrage Bureau has kept an exhaustive and careful record, and the manager of that bureau testifies that if the demurrage charge on interstate shipments had been the same as upon state shipments the carriers' available equipment would have been increased by approximately 3,000 cars per month.

"Respondents assert positively that the increased demurrage charge is not intended to increase the carriers' revenues; on the contrary, they expect from it the same effect produced by the higher charge on state shipments, to-wit, a substantial reduction in the amount of demurrage paid. They expect benefit to result to both carriers and shippers from the release of equipment.

"Carefully prepared and uncontradicted statistics are presented, covering three periods. The first, 32 months from November 1, 1906, to June 30, 1909, when the demurrage charge was uniformly \$1 per car per day; the second, 22 months from June 30, 1909, to April 30, 1911, when the charge on state traffic was \$6 and on interstate traffic \$1 per car per day; and the third, 10 months from May 1, 1911, to February 29, 1912, when the charge on state traffic was \$3 and on interstate traffic \$1. The total time covered by the second and third periods is the same as that covered by the first period.

"These records show that at the important terminals of San Francisco, Los Angeles, Oakland, and Sacramento, during the first period 781,214 cars were handled, while

during the second and third periods 1,068,240 cars were handled, an increase of 287,026 cars, or 36.74 per cent. During the first period 101,303 cars were held beyond the free time, while during the second and third periods the number so held was 38,103, a decrease of about 62 per cent.

"The percentage of cars held overtime at these four terminals during the first period was 13.04. The detention during the first period of cars subject to the \$6 charge was 1.5 per cent; the detention of cars subject to the \$3 charge during the third period was 2.43 per cent, and the average detention of cars subject to the state charge during the second and third periods together was 1.84 per cent. During the second period the detention to interstate shipments was 8.68 per cent; during the third period it was 8.11 per cent, and the average for the second and third periods together was 8.49 per cent.

"The demurrage collected at these four terminals during the first period, when the charge was uniformly \$1, amounted to \$282,917, while during the second and third periods together, when the charges on state shipments were \$6 and \$3, it was \$150,399, a decrease of \$132,578, or 47 per cent.

"At all stations in California 2,392,509 cars were handled during the first period, and 3,506,701 during the second and third periods, an increase of 1,114,192 cars, or 46.57 per cent. During the first period 187,172 cars were held overtime, and during the second and third periods 113,343 cars were so held. During the first period the detention was 7.82 per cent; during the second period the detention of cars subject to the \$6 charge was 1.06 per cent; during the third period the detention of cars subject to the \$3 charge was 1.48 per cent; and during the second and third periods together the average detention to state shipments

amounted to 1.21 per cent. During the second period the detention of interstate shipments was 5.68 per cent; during the third period it was 5.32 per cent; and for the second and third periods together, 5.56 per cent.

"The collection of demurrage for the whole state amounted during the first period to \$566,298, and during the second and third periods to \$344,146, a decrease of \$222,152, or something over 39 per cent.

"During the first period the detention beyond free time averaged 3.32 days per car, or 611,345 car days; during the second and third periods together the average detention of all cars was 2.4 days, or 170,164 car days, a decrease of practically one day per car, or 441,181 car days.

"The demurrage charges paid during the second and third periods together were approximately \$7,000 per month less than during the first period.

"A statement is presented showing the demurrage incurred and paid by some 340 consignees and shippers for the three periods mentioned, recapitulation of which shows that during the first period they held 47,482 cars 140,655 car days, upon which they paid demurrage aggregating \$140,655. During the second period they held 1,963 cars subject to the \$6 charge for 2,535 car days, upon which they paid demurrage amounting to \$15,412. During the third period they held 1,348 cars subject to the \$3 charge for 2,024 car days, upon which they paid demurrage amounting to \$6,049. During the second and third periods they held 6,343 cars subject to the \$1 charge for 18,135 days, upon which their demurrage charges were \$18,135. They therefore paid \$140,655 demurrage during the first period, and \$39,596 during the second and third periods.

"Many of these consignees and shippers have entirely eliminated demurrage charges. Practically all of them have reduced such charges to insignificant amounts. One

firm which paid \$2,516 of demurrage during the first period paid \$302 for the second and third periods together. One firm that paid \$1,799 during the first period paid \$132 during the second period on cars subject to the \$6 charge, and during the third period paid nothing. It is abundantly shown that the effect of the higher demurrage charges on state shipments have been to very materially reduce the amounts of demurrage collected by the carriers.

"Statement is presented which shows that 25.52 per cent of the number of cars loaded with perishable freight were held overtime at Omaha, Neb., Denver, Colo., and Chicago, Ill., the average time in excess of the free time being 8.32 days. During the same time 10.75 per cent of the cars loaded with dead freight were held overtime at the same points, the average delay in excess of the free time being 5.85 days.

"It is suggested by protestants that it is unduly discriminatory for respondents to assess \$3 per car per day demurrage in California and a lower charge at points on their lines other than in California. As previously stated, respondents insist that there is no discrimination against the California people, but on the contrary, if there is discrimination, it is in their favor. In addition to the differences in conditions already mentioned, respondents say that the situation in California differs from that in other states in that in California the state rate is fixed by the state. The reciprocal feature of the state rule imposes penalties upon the carriers for failure to supply cars upon demand of shippers, and it is therefore essential that they have a full and dependable car supply, which they can not have under the lower demurrage charge on interstate shipments. It is testified that approximately 20 per cent of the cars handled in California are loaded with interstate traffic and 80 per cent with state traffic, and it is said that

but 5 per cent of the total demurrage is paid by consignors for failure to load cars within the free time. Confusion and difficulty is experienced in assessing demurrage charges because it is frequently difficult to determine the character of a shipment; for instance, shipments coming into the state through its ports, some of which originate in California and others at interstate points, and shipments upon which reconsignment or diversion privileges are exercised, which are originally billed locally but are afterwards sent to interstate points. They say that they have not experienced difficulties of congestion in adjacent states as they have in California, and that they deemed it wise to withhold change in Arizona and New Mexico because they are newly created states with newly constituted commissions. On the argument it was stated that neighboring states are considering increasing their state demurrage charges because of the manifest benefits which have come from the higher charges in California.

"Respondents point to the several decisions before referred to and aver that the demurrage charge of \$1 per car per day is not properly compensatory for the use of the car. They point to statistics which show that the average daily earnings of a car on the lines of the carriers in the group which includes California amount to \$3.73. They urge that necessarily a certain percentage of their cars are out of repair and engaged in the carriers' service; that Sundays and holidays are excluded in assessing demurrage charges, and that therefore the reasonable earnings per car per day are substantially in excess of the proposed \$3 charge. They point to the previously cited cases in which this Commission has approved track-storage charges in addition to demurrage, and to numerous instances in which charges greater than \$1 per day have been approved by state commissions or the courts. *Miller vs. Mansfield*, 112

Mass. 260; Rothschild vs. C. & N. W. Ry. Co., Iowa R. R. Comm. Rep. for 1887, 783; N. & W. Ry. Co. vs. Adams, 90 Va. 393, and cases therein cited.

"It is insisted that the \$1 demurrage rate was fixed years ago, when cars were of a much smaller capacity and lower earning power than at the present time; that providing the larger equipment has necessitated a correspondingly increased cost and that therefore the earning power of a car of today is substantially in excess of that of the smaller type which has been superseded. The increased capacity of cars has in similar connections been urged as a reason for granting additional free time for unloading, but it seems evident that a given quantity of freight can be unloaded from one car as quickly and as cheaply as it could be unloaded from two cars, and if a large car is held overtime the demurrage is on only one car, whereas if two cars containing an equal amount of freight were held overtime demurrage would accrue upon both cars.

"The testimony submitted by protestants was meager and confined to that of three witnesses, one of whom asserted that the increase in the demurrage rate was resorted to by the carriers as a means of increasing their revenues. This witness testified that during one year his firm paid \$1,800 demurrage, after which experience it decided it would be cheaper to increase its facilities for caring for its freight, and admitted that the higher state demurrage charges had been effective in stimulating the prompt release of cars. During the first period, under a uniform rate of \$1 per car per day, this firm detained 70 cars and incurred demurrage charges of \$459; during the second and third periods it detained 9 cars and incurred demurrage amounting to \$38.

"The second witness testified that when his firm was engaged in taking an inventory it would not unload cars,

whatever the demurrage charges might be. The record shows that during the first period of 32 months this firm detained 282 cars and incurred demurrage charges of \$698, while during the second and third periods it detained 70 cars and incurred \$147 demurrage. This witness said that the amounts of demurrage paid by his firm 'have not been worrying us.'

"The third witness admitted that the facilities of his firm were insufficient to care for its business and are in a cramped condition. He referred to bunching of cars by carriers as a cause of demurrage accruing, but admitted that the carriers' rules provide for abatement of demurrage so caused and that his firm had secured waiver of charges under that provision. This firm, during the first period, detained 330 cars and incurred \$1,189 demurrage; during the second and third periods it detained 225 cars, upon which \$980 demurrage accrued. It appears, however, that during the second and third periods there was a substantial increase in the business of the firm.

"Much has been said in proceedings before us and in the press and magazines about the importance of increased facilities for carriers, and it has been strongly urged that those facilities should be provided out of additional revenue secured from generally increased freight rates. Some have gone so far as to insist that proper increased efficiency can be secured in no other way. A full argument of those questions would necessitate an analysis of the earning capacities of the carriers under the present rates and that will not be undertaken here. It is sufficient to say that one way in which to increase the facilities as well as the earning power of the carriers is to bring about the fullest and freest possible use of the facilities and equipment already possessed and to attempt as far as possible to secure needed relief, not by general increase in freight rates, but

by reasonable charges for services rendered levied against those for whom such services are performed.

“Stepping for a moment outside of the record we see, in a report of an investigation made of conditions on a large and important railroad system of the country, that in the busy season the average time consumed by shippers in loading cars is less than 2 days, and the average time consumed by consignees in unloading is less than 3 days, Sundays included. This indicates the clear possibility of loading and unloading within the free time allowed whenever and wherever proper facilities are provided and due diligence is exercised.

“In their brief protestants argue that the circumstances and conditions in California are not substantially different from those which obtain in other sections of the country where of necessity the movement of the products of the section is heavy during certain portions of the year. Their principal contention, however, is that the imposition of a higher demurrage charge in California than in other states served by respondents, or than in other states of the Union, is in violation of sections 1 and 3 of the act and an undue discrimination against California and the shippers and receivers located therein. Section 1 of the act requires that all charges for any service shall be just and reasonable. The record in this case we think conclusively shows that under the circumstances a demurrage charge of \$3 per car per day on interstate shipments in California is not unreasonable per se. Section 3 of the act prohibits undue or unreasonable preference or advantage to any person, locality, or particular kind of traffic. Section 2 of the act prohibits charging to one a greater or less compensation than is charged to another for a like and contemporaneous service under substantially similar circumstances and conditions. If it can be said that Section 3 prohibits a higher demurrage charge in California than

is assessed in New York, would it not necessarily follow that it also prohibits charging a higher rate for transporting a given quantity of freight a given distance in California than is charged for a like service in New York? Clearly the circumstances and conditions connected with the service rendered must be taken into consideration in determining what is undue or unreasonable preference or advantage under Section 3 of the act.

"The carriers are under no obligation to furnish storage in cars, but if they voluntarily undertake to provide such storage they are entitled to reasonable compensation therefor, which, as the Supreme Court has said, may include a profit beyond the cost of the service. There can be no justice in permitting one consignee to hold cars for storage or for his convenience or economy when the business of shippers is suffering because they can not get those cars for loading, and the carriers are deprived of the earnings upon such loading. If additional charges for the purpose of releasing tracks are proper and reasonable, why are they not equally proper and reasonable when for the purpose of releasing cars?

"On this record there can be no doubt that respondents have shown that the conditions in California are substantially different from those obtaining in other states which they serve. The benefits derived by the shipping public in California as well as by respondents from the higher demurrage charges on state traffic are conclusive and unchallenged. Under the circumstances here presented it does not appear that the higher demurrage charge in California than at other points on respondents' lines is unjustly discriminatory against the California shipper or receiver, or unduly preferential to shippers and receivers at other points on respondents' lines. It does not at all follow that in withholding disapproval of the proposed increased de-

demurrage charge in California the same action would follow elsewhere where conditions are different, but on the record as here made it is impossible to find otherwise than that respondents have amply met the burden cast upon them by the statute of showing the reasonableness of the proposed increased charge, and the order of suspension will be vacated as of January 6, 1913."

Lane, Commissioner (concurring):

"I agree to this conclusion and approve of this unprecedented demurrage charge as to California for this reason: That it is practically unopposed by the shippers and is supported by those railroad officials who have shown themselves most sincerely in favor of securing efficient car service. It is not the demurrage charge that has resulted in the phenomenally excellent condition that obtains in California. Such condition is due, in my judgment, largely to the presence of an effective, powerful, and authoritative demurrage bureau which has competent management and with which the railroad operating officials work in harmony to give a service which the law requires. Under such conditions it makes little difference what the demurrage rate may be, for little demurrage will be imposed under normal conditions, and abnormal conditions are prevented from developing. Where there are no independent demurrage bureaus, as in most of the eastern territory, and rules are but laxly enforced, or where there is no authority in the demurrage officers to require the carriers to make prompt delivery and otherwise efficiently serve shippers and consignees, or where there is an inadequate supply of equipment and the rule rather than the exception is irregularity of movement—where such things are found a demurrage rate such as we here justify would be nothing less than an unjustifiable penalty imposed upon shippers and consignees because of the railroad's delin-

quencies. The opinion in this case is to be read as a promise to those roads who believe in doing their duty that this Commission will cooperate with them, and is not to be understood as the indorsement of any particular rate of demurrage or as the establishment of any permanent principle."

Prouty, Chairman (dissenting):

"This record plainly shows that the \$1 demurrage charge had not proved adequate in the state of California. Notwithstanding that this charge was apparently imposed and collected, cars were held under load and awaiting load as though there were no demurrage rules, and this abuse had seriously crippled the ability of railroads to afford reasonable transportation facilities. Plainly, some measure should have been taken to correct this situation. As appears from the opinion, the state of California imposed, first, a \$6, and afterwards a \$3, per day demurrage charge, and this seems to have stopped the evil of car detention with respect to state movements.

"The record indicates, however, that there is still undue detention with cars employed in interstate traffic, and I do not in any degree dissent from the proposition that something should be done to correct this evil. Some way, certainly, should be devised by which the shipper is prevented from withdrawing cars from the service of transportation, since otherwise the entire public must suffer. But I doubt the wisdom of reaching this evil by the application of a general \$3 demurrage charge.

"In my opinion, taking this country as a whole, the present demurrage rate of \$1 per day is sufficient, when honestly enforced. There are undoubtedly instances in which this is not true. There are localities at which, and certain lines of business in which, the \$1 charge is not sufficient to correct the undue detention of cars. But

these are special cases, which can be dealt with by special remedies and have been so dealt with, with the approval of this Commission. To impose a general charge higher than \$1 would be, in my opinion, to impose upon the honest shipper an undue burden.

"Car efficiency in this country is not what it should be, but this, in my opinion, is due more to the railroads than to shippers, and measures to improve car efficiency should ordinarily take some other form than a mere increase of the demurrage rate. I should prefer to see this situation in California dealt with by some other means than a general increase in the demurrage charge. While it is possible that the Pacific coast states may be so isolated from the rest of the country that a different rule can be applied there from what is maintained elsewhere, even that will, I think, be found difficult. To my mind, it is most unfortunate to break into the uniform demurrage code even upon the extreme edge."

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 315.

In the Alan Wood Iron & Steel Company case, 24 I. C. C. Rep. 27, was discussed the separation of cars under the average agreement. Speaking of the attack made upon this feature of the demurrage code, the Commission said:

"This code was not prepared by the carriers, but by a committee of the National Association of Railway Commissioners, composed of a representative of each state that has a railway commission and a member of the Interstate Commerce Commission. * * *

"Under the individual car plan of demurrage no charges are assessed:

"(1) When the condition of the weather during the prescribed free time makes it impossible to employ men or teams in loading or unloading, or to load or unload without serious injury to the freight; (2) when shipments

are frozen so as to prevent unloading during the prescribed free time or when because of high water or snowdrifts it is impossible to get to cars for loading or unloading during that time; (3) when as the result of the act or neglect of any carrier cars for one consignee are bunched and delivered in accumulated numbers in excess of daily shipments. In these instances the free time is extended so that a consignee is accorded the same amount of free time he would have been entitled to but for those causes.

"Provision as to debits and credits.

"The rules provide: 'In no case shall more than one day's credit be allowed on any one car.'

"In view of complainant's statement that defendants are not charged with having violated the rules, defendants contend that the report of the committee on car service and demurrage, National Association of Railway Commissioners, conclusively refutes the contentions advanced by complainant."

(5) **Industrial Rule.** "Under demurrage rules previously in effect, besides the additional time allowed industrial plants performing their own switching, 24 hours' free time was allowed where pig iron or scrap was analyzed before unloading. In the new, or uniform rules the industrial rule was omitted. Where cars are placed at loading and unloading points by the carrier, the free time begins to run from the first 7 a. m., after the cars are so placed. At industrial plants which do their own switching to and from interchange tracks the time begins to run from the first 7 a. m. following placement on interchange tracks, and continues until return thereto.

"It is alleged that no objection was made at the public hearing in Washington in June, 1909, to the industrial rule contained in the draft of proposed rules and that only casual reference was made to it in the discussions. After reading what purported to be the recommendations which

would be made by the committee to the convention of the National Association of Railway Commissioners, complainant wrote the chairman of the committee on November 12, 1909, requesting that shippers and railroads be given a public hearing before the rules became effective. The convention met November 16, 1909. Feeling that at the public hearing in June, 1909, all had been given every opportunity to submit their views, it was considered not only impracticable, but unnecessary to grant further hearing. Counsel for complainant was present at and participated in the proceedings before the committee and filed a brief on behalf of complainant.

"Complainant contends that the only theory on which the elimination of the industrial rule can be supported is that transportation ceases at the interchange track. It is argued that interstate commerce commences and ends at the points of loading and unloading.

"Complainant receives cars from and delivers them to the defendants on interchange tracks. Although each defendant classifies cars according to commodities, complainant, as a preliminary to switching loaded cars to unloading points, consolidates the classifications, weighs the cars, both loaded and empty, and analyzes pig iron and scrap. In view of these facts, complainant contends additional free time should be allowed.

"The report of the committee on car service and demurrage, on page 221 of the proceedings of the twenty-first annual convention of the National Association of Railway Commissioners, accounts for the disappearance of the industrial rule. The gist of the report in this respect is that an allowance in the form of additional time is just as unlawful as one in the form of money. Complainant, however, submits that *General Electric Co. vs. N. Y. C. & H. R. R. Co.*, 14 I. C. C. 237; *Solvay Process Co. vs. D. L.*

& W. R. R. Co., 14 I. C. C. 246; and Chicago & Alton Ry. Co. vs. U. S., 212 U. S. 563, which were quoted by the committee in its report, do not touch on the illegality of the industrial rule. It is argued that Section 15 of the act clearly recognizes the right of the carrier to give compensation to any person rendering any service, such as switching, although it apparently does not give the Commission the right to compel the carrier to give such compensation. It is alleged that Union Pacific R. R. vs. Updike Grain Co., 222 U. S. 215, following Diffenbaugh case, 222 U. S. 42, recognize that services performed by the owner may be a part of the interstate transportation and carriage; that the switching between the tracks of the carrier and the loading and unloading points of the industry is a part of the interstate transportation, and it is proper for the demurrage rules to give additional time allowance for this part of the interstate transportation when performed by the industry and not by the carrier. Even conceding for the sake of argument that complainant may be reimbursed for the switching service it performs, and without passing upon the legality of such an allowance, does it follow that the reasonable compensation specified in the act shall be enlarged by additional free time? Does not this argument suggest that because it may be legal for the defendants to make a reasonable allowance to complainant they should discriminate in its favor? We are not prepared to direct additional time allowance to industrial plants."

(6) Notification. "In the committee report it was stated:

"Placement of cars upon private or interchange tracks should be sufficient notice to the consignee equipped with these facilities, for the reason that such delivery is not made except in response to general or special orders.

"It appears from the evidence that, in some instances,

free time commences to run before the car can be removed from the interchange track. The contents of a box car can not be known without breaking the seal, and that has been held to constitute acceptance. Even as to open cars, it is possible only to see the contents and car number. It is the practice of some shippers to consign to complainant a car of some commodity, particularly scrap iron, without having received an order therefor, and, if same is accepted by an unwary consignee under the misapprehension that it was shipped under contract, to demand more than the market price. To protect against such fraud complainant claims it is entitled to notice containing the information now given consignees other than those receiving freight on interchange tracks. The complainant avers that the defendants are under legal obligation to furnish similar information; that until it is furnished delivery is not complete, and time should not begin to be computed. In some cases it takes three or four hours before the desired information can be obtained from the defendants, it being secured by telephone.

"We think that defendants should give to complainant notice of arrival of cars loaded with scrap iron and of consignments in box cars, stating point of shipment, car initials and number, and contents, and that under the average plan of demurrage free time on such cars should run from the first 7 A. M. after such notice is mailed, or is given verbally or by telephone, or from the first 7 A. M. after the car is placed upon interchange track if such placement is later than the giving of notice. We assume that this suggestion will be followed by defendants without the entry of an order with regard thereto."

(7) Average Rule: Separation of Cars Into Two Classes.

"The report of the committee on car service, demurrage and reciprocal demurrage to the twenty-third annual con-

vention of the National Association of Railway Commissioners, in October, 1911, and which was adopted by the convention, contained the following:

“‘From such information and facts as we have been able to obtain in the matter it appears to us that Rule 9, the so-called average rule of the uniform code, would tend to promote even greater efficiency in car movements and would become even more equitable to all concerned than is now the case if it was so amended that the credits earned on any kind or class of freight cars could be used in offsetting debits accrued on any other kind or class of freight cars. For these reasons we recommend that subdivision “C” of said Section 9 in the uniform code be either repealed or so amended that, for the purposes of this section, all the freight cars be placed in only one class. We wish to call the attention of the officers and members of the American Railway Association to this recommendation, and earnestly hope it will receive their serious consideration.’

“During a period of 15 months from June, 1910, to August, 1911, complainant paid \$1,002 demurrage. If the average rule had permitted the offsetting of credits which were earned on one class of equipment against debits accrued upon the other class, \$569 of this demurrage would not have accrued. In other words, with the exception of the months of July and December, 1910, and March, 1911, complainant had sufficient credits to offset the debits. In July, 1910, it handled, via the lines of both defendants, 625 cars other than box cars, and paid \$460 demurrage thereon. Had it been able to offset credits earned on box cars against the debits on other cars it still would have had assessable against it \$334. What the conditions were which brought about the peculiar situation in this month is not disclosed by the record. At any rate, but

for the separation rule, during a period of fifteen months complainant would have had only \$374 demurrage on approximately 25,000 cars handled. We cite this simply to show that the greater part of the demurrage which complainant paid accrued through the application of the subdivision of the average rule providing for the separation of cars into two classes. The argument is advanced that, generally speaking, it takes longer to unload box cars than freight cars of other kinds. The situation disclosed by the record, however, is that with the exception of the three mentioned, no demurrage against complainant accrued on the Pennsylvania on cars other than box cars; whereas, on the contrary, no demurrage accrued on the Reading on box cars. In other words, it would appear that complainant was not able to promptly unload box cars on the Pennsylvania, but was able to do so on the Reading.

"Since this case was heard a committee of the American Railway Association, representing the carriers, and a committee from the National Industrial Traffic League, representing the shippers and consignees, have mutually agreed upon changes in the uniform code, eliminating objectionable features that developed from experiences thereunder. Among the changes so agreed upon is the elimination of the provision for separation of cars into two classes under the average rule. The action of these committees has been approved by the American Railway Association, and the uniform demurrage code as so amended has been approved, but not prescribed, by the Commission."

(8) Weather Interference, and Bunching. "No testimony was given as to the effect upon plants doing their own switching of the absence of a weather-interference rule from the average agreement. Instances of bunching

were cited. One is illustrative: Fifty-eight cars of coke were shipped between December 20 and 31; 31 prior to December 24, and the remainder on and after that date. Thirty-one were delivered on January 2, and 23 on January 4; the remainder thereafter. Demurrage accrued. We only have the fact that the cars were delivered in accumulated numbers in excess of daily shipments, and no evidence as to whether or not that was a direct result of the act or neglect of carriers.

"The committee on car service and demurrage reported:

" 'We can not blind ourselves to the fact that the 'weather rule' and its fellow, the 'bunching rule,' lend themselves peculiarly to gross abuses. They are employed constantly as pretexts for exempting favored industries from demurrage generally.' "

"However, the committee was convinced that their omission from the individual plan would entail great hardship, but stated that 'the average rule is intended to take care of all bunching and weather interference.' "

(9) **Debits and Credits.** "Complainant contends that the so-called average rule is not a true average rule, because only one day's credit is allowed upon a car unloaded and returned to the interchange track before the free time begins to run. The industry, it is alleged, is justly entitled to credit for the extra day which it has saved by its promptness.

"It appears unnecessary to here repeat what was said by the committee on car service and demurrage in its report to the convention of the Association of Railway Commissioners in recommending the average agreement. It is probably sufficient to say that that rule had both supporters and opponents. The elimination of the separation of cars into two classes was recommended. Acting thoughtfully and deliberately, the committee and the con-

vention decided not to include in the average agreement provision that demurrage should not accrue on account of weather interference and bunching. The provision for but one day's credit was likewise purposely made.

"The only change in the demurrage rules which, under this complaint, we would order has already been made by the carriers."

§ 11. Uniform Demurrage Rules.

"It seems appropriate," said the Commission in its Annual Report for 1909, "to refer to the adoption of a uniform code of car demurrage rules by the National Association of Railway Commissioners. As its name indicates, this association comprises the membership of all the railroad commissions of the United States, meeting in annual convention for the purpose of considering common problems. At the 1908 session the Committee on Car Distribution and Car Shortage submitted a report which reviewed the severe car shortage of the previous fall and pointed out that the breakdown of the country's transportation system at that time was chargeable in no small degree to the undue holding of cars by shippers and receivers of freight. As a step toward the improvement of existing conditions, it was recommended that a committee be appointed to draft a uniform code of car demurrage rules to be applicable alike on state and interstate traffic. This recommendation was unanimously adopted, and pursuant thereto a Committee on Car Service and Demurrage was appointed, consisting of a representative from the Railway Commission of each state and a member of this Commerce Commission. The work of this committee was carried on with extreme care and thoroughness. Numerous conferences were held with expert car demurrage offi-

cial and a public hearing was called, at which representatives of shippers and carriers generally were present. The code as finally prepared represents a serious effort to approximate the needs of every part of the traffic world without making unnecessary concessions to the demands of particular localities or special interests. Perhaps the most characteristic features of the code are (1) the tendency to limit 'free time' to the actual requirements of the consignor and the consignee, and (2) the refusal to give recognition to rules which have been employed as instruments of discrimination. The code was adopted by the National Association of Railway Commissioners by a large majority, and has recently been indorsed by this Commission. Although these rules have encountered a certain amount of opposition, there are indications that they will be made generally effective throughout the United States as contemplated. A number of state commissions, as well as several of the leading car demurrage bureaus have already announced their intention to put the uniform code into immediate effect.

"It has been stated by competent authority that the general adoption and enforcement of demurrage rules allowing the smallest measure of 'free time' consistent with the needs of the public will be equivalent to the addition of 100,000 cars to the country's available car supply. If this effort to standardize car demurrage regulations should meet with the success that is now promised, there is good reason for the belief that, incidentally, many unlawful advantages which powerful shippers have been able to secure through loose car-service rules will be eradicated.

"The divided control over commerce gives rise to many problems, the successful solution of which is dependent upon harmonious action on the part of the state and

national authorities. The extraordinary development of transportation within the last half century has made all sections of the country peculiarly interdependent, and it is obvious that regulations which interfere with the efficiency of carriers in one section will influence traffic conditions in widely separated areas. This is strikingly illustrated by certain phases of the demurrage question. Railroad cars move freely to all parts of the country, often thousands of miles from the line of the owning road, and if, by means of local demurrage rules, such cars are indefinitely detained at a time when the carrier's services are most in demand—as in the fall, when the crops are being moved and the coal tonnage is most dense—a car famine will inevitably result. Co-operation between the Federal and State Railroad Commissions with a view to securing the maximum of transportation efficiency and at the same time assuring equal service to shippers and receivers in all parts of the country, so far as that may be possible, augurs well for the future of government regulations.”

From the Ann. Report of the I. C. C. for year 1909 (23rd).

On March 14, 1912, the National Industrial Traffic League met in special meeting at Chicago for the purpose of hearing, among other reports, the report of the committee under the chairmanship of Mr. J. C. Lincoln, with its proposed revision of the Uniform Code of Demurrage and Car Service Rules.

At a joint conference between this committee and a committee representing the American Railway Association, at which Commissioner Lane of the Interstate Commerce Commission presided, March 28 and 29, 1912, an agreed revision of the Uniform Code was arrived at for submission to the Interstate Commerce Commission.

Under date of June 3, 1912, the Interstate Commerce

Commission announced that, recognizing the great benefits to be derived from uniformity in car service rules, it was desirous of lending its influence to the movement. The Commission therefore tentatively indorsed the revised rules and explanations thereof adopted by the American Railway Association and recommended that they be made effective on interstate transportation throughout the country. This action was, of course, subject to the right and duty of the Commission to inquire into the legality and reasonableness of any rule or rules which might be made the subject of complaint.

On April 10, 1911, the Interstate Commerce Commission gave out the following interpretations of the Uniform Demurrage Rules:

"The following interpretations and explanations by the American Railway Association of certain of the National Demurrage Rules recommended by the Commission on December 18, 1909, for use throughout the country are tentatively accepted subject to the right and duty of the Commission, upon complaint made or on its own initiative, to inquire into the legality and reasonableness of any such rule so interpreted and applied.

(1) **"Rule 1—Cars Subject to Rules.** Cars loaded with company material for use of and consigned to the railroad in whose possession the cars are held are not subject to demurrage.

"Empty cars placed for loading with company material are subject to demurrage, unless the loading is done by the railroad company for which the material is intended and on its track.

"(a) Empty cars placed for loading live stock by shippers are not exempt and should be reported.

"(b) Live poultry is not considered as live stock, and cars so loaded are subject to demurrage.

“(c) Empty private cars stored on tracks, switched by carriers, taken for loading without order or requisition from shipper and without formal assignment by carrier’s agent, shall be recorded as placed for loading when actual loading is begun.

Note.—“Private cars belonging to an industry which does its own switching, placed upon an interchange track for forwarding, and refused by the carrier’s inspector, shall be released from demurrage if withdrawn by the industry from the interchange track within twenty-four (24) hours after rejection.

“Private cars are not in railroad service—

“(a) When loaded and unloaded on the tracks of the owner and not moved over the tracks of a carrier;

“(b) When placed by the carrier for loading on the tracks of the owner and refused by the inspector.

(2) **“Rule 2—Free Time Allowed.** (a) When the same car is both unloaded and reloaded, each transaction will be treated as independent of the other.

“(b) 1. Applies to cars held on carrier line for disposition. A change of consignee after arrival of car at destination is not a reconsignment under these rules, unless a switching movement covered by a tariff is involved. It also includes cars held in transit for reconsignment. (See also (b) 3.)

“It also applies to cars held on the carrier line within a switching district consigned to a point on a switching line within such district, which can not be received on account of disability of the consignee. The carrier line must in all cases give notice in writing to the consignee of all cars so held. Time will be computed in accordance with Rule 3 (b), following.

(3) **“Rule 3—Computing Time.** Note.—The exemption of holidays does not include half holidays.

“(b) When orders for cars held for disposition or reconsignment are mailed, such orders will release cars at 7 A. M. of the date orders are received at the station where the freight is held, provided the orders are mailed prior to the date received, but orders mailed and received on the same date release cars the following 7 A. M.

(4) **“Rule 4—Notification.** When cars are for delivery to public team tracks, and placement is delayed for more than twenty-four (24) hours after notice of arrival is given, a notice of placement must also be given to the consignee, and the free time for unloading computed according to the notice of placement.

(5) **“Rule 7—Demurrage Charge.** Charges accruing under these rules must be collected in the same manner and with the same regularity and promptness as other transportation charges.

(6) **“Rule 8—Claims.** The exemptions on account of high water or snowdrifts apply only when the point at which car is placed for loading or unloading is inaccessible to the general public by reason of these conditions.”

I. C. C. Conf. Rulings Bull. No. 6, Ruling No. 313.

CHAPTER X.

DEMURRAGE CHARGES AND RULES—(Continued).

- § 1. Demurrage Rules and Charges Governing Traffic to and from Canada.
- § 2. Demurrage on Private Cars.
- § 3. "Private Side Track" and "Private Cars" Defined.
- § 4. Incorporation in Tariffs of Amended Definition of Private Cars.
- § 5. Demurrage on Private Cars Temporarily Out of Service on Carrier's Storage Tracks.
- § 6. Derrick and Similar Construction Cars Are Not Ordinarily Subject to Demurrage Charges.
- § 7. Demurrage on Private Cars Standing on Carrier-owned Track Especially Intended for Such Cars.
- § 8. Difference in Free-Time Allowance Occasioned by Nature and Character of Commodity.
- § 9. Interstate Commerce Commission on Demurrage Rules, Practices and Charges.
- § 10. Demurrage Rules Must be Just and Reasonable.
- § 11. Reasonableness of Demurrage Charges.
- § 12. Status of Carrier and Shipper as Affecting Demurrage Charges.
- § 13. Efficiency of High Demurrage Charges.
- § 14. Adjustment of Demurrage Charges Accruing During Controversy Between Carriers.
- § 15. Adjustment of Demurrage Charges Accruing During Controversy Between Shipper and Carrier.
- § 16. Switching Shipments Upon Which Transportation Charges Have Not Been Paid.
- § 17. Demurrage Charges Accruing During Construction of Private Siding.
- § 18. Demurrage Charges Accruing Account "Bunching" of Cars.
- § 19. Notification, Free-Time and Placement as Affecting Demurrage Charges.
- § 20. Demurrage Charges Against Logging Road.
- § 21. Demurrage on Carload Shipment Transferred Into Two Cars.

- § 22. Effect of Flood—"Act of God"—Upon Accrued Demurrage Charges.
- § 23. Act to Regulate Commerce Transcends Contract Relating to Demurrage.
- § 24. Demurrage on Refused Shipments.
- § 25. Demurrage on Astray Shipments.
- § 26. Demurrage on F. O. B. Shipments.
- § 27. Demurrage Charges Resulting from Strikes.
- § 28. Demurrage Charges Accruing from Tender of Check in Payment of Freight Charges.
- § 29. Demurrage Charges Accruing Under Average Plan.
- § 30. Point at Which Demurrage Accrues; Unity of Shipment Impaired.
- § 31. Reconsignment in Connection with Demurrage.
- § 32. Waiver of Demurrage Charges and Causes Therefor.
- § 33. Carrier's Rules Permitting Suspension or Waiver of Demurrage Charges Must be Published.
- § 34. Discrimination Between Shippers in the Waiver of Demurrage Charges Prohibited by Law.
- § 35. Waiver of Demurrage Charges Under Special Circumstances.
- § 36. Waiver Account of Proceeds of Sale of Freight for Transportation Charges Not Sufficient to Pay Demurrage Charges.
- § 37. Waiver of Demurrage Charges Account "Bunching" of Cars in Transit.
- § 38. Waiver of Demurrage Charges on Account of Adverse Weather Conditions.
- § 39. Waiver of Demurrage Charges Unlawful Under Terms of Lease with Shipper.
- § 40. Collection of Demurrage Charges Under Unfiled Tariffs.
- § 41. Demurrage Charges Accruing on Account of Strike.
- § 42. Demurrage Accruing on Account Embargo.
- § 43. Demurrage Charges Must be Paid by Either the Vender (Usually the Consignor) or Vendee (Usually the Consignee).
- § 44. Rules of Interstate Commerce Commission Governing Demurrage Charges Are Not Given Retroactive Effect.

CHAPTER X.

DEMURRAGE CHARGES AND RULES—(Continued).

§ 1. Demurrage Rules and Charges Governing Traffic to and from Canada.

With respect to traffic between points in Canada and points in the United States, the Commission does not waive the requirement that carriers shall file tariffs showing their terminal charges and such charges must either appear specifically in the tariffs naming the rates or the tariffs establishing such charges must be specifically referred to in the tariffs naming the rates.

Conf. Rulings Bull. No. 6, Ruling No. 191, June 14, 1909.

§ 2. Demurrage on Private Cars.

"Whatever the facts may have been which have led up to the present private ownership of tank cars, the fact remains that it is the duty of the carriers to furnish such cars, and that sound public policy demands that this duty should be performed in order that all shippers may be served equally well.

"So long, however, as carriers hire cars from shippers, and the latter are under compulsion to furnish their own equipment by reason of the carriers' failure, we are not disposed to permit the carriers to treat this equipment as their own to the extent of imposing penalties for its non-use when it neither is on the tracks of the carrier nor paid

for by the carrier when standing idle. Primarily demurrage is imposed by a railroad to compel prompt loading and unloading of cars. This is a proper regulation. The Commission fully recognizes the right of a carrier to secure the fullest practicable use of its equipment and to be recompensed for delays caused by the negligence and indifference of shippers and consignees. Such principle, however, does not carry with it by necessary implication the right to make a charge when no service is given. And upon what basis can it be justly said that a consignee, who owns his own sidetrack upon which rests a tank car furnished by his consignor, may be subjected to a per diem of \$2 for demurrage by a carrier which owns neither track nor car? What is the carrier giving, what service is it rendering for which it should be paid while such car is on the private track? If the carrier paid a daily rental for the car, whether moving or not, it would clearly have a right to exact a payment for unreasonable delay on the part of the shipper or consignee; or if it furnished the track upon which the car stood it might likewise, and properly, make a charge for the use of the track. These tank cars are, however, not owned by the carrier, and their rental is paid on a purely mileage basis. We must, therefore, treat them as only to a limited degree a part of the carrier's equipment.

"It is, therefore, our conclusion that private cars owned by shippers and hired to carriers upon a mileage basis are subject to demurrage when such cars stand upon the tracks of the carrier, either at point of origin or destination of shipment, but are not so subject when upon either the private track of the owner of the car or the private track of the consignee. The carrier must charge demurrage in all cases where such demurrage is imposed by tariff provision upon its own equipment, except when a privately

owned car is upon a privately owned siding or track, and the carrier is paying, or is responsible for, no rental or other charge upon such car; and a privately owned car, in the sense in which that expression is here used, is a car owned and used by an individual, firm or corporation for the transportation of the commodities which they produce or in which they deal.

"In expressing this opinion the Commission is not to be regarded as bound thereby, either to the recognition of the right of a carrier to refuse to furnish proper and appropriate facilities for the shipment of oil or any other commodity, or of the right of a carrier to so contract with a shipper for the use of facilities as to permit any discrimination as between shippers or consignees."

In the Matter of Demurrage Charges on Privately Owned Tank Cars, 13 I. C. R. 378, 381.

I. C. C. Confr. Rulings Bull. No. 6, Rulings Nos. 79, 121, 123, 128, 222, 313.

See also—

Proctor & Gamble Co. vs. U. S., 188 Fed. Rep. 221, 228.

Proctor & Gamble Co. vs. U. S., 225 U. S. 282.

Hooker vs. Knapp, 225 U. S. 302.

Central Commercial Co. vs. G. & S. I. R. R. Co., 23 I. C. C. Rep. 532.

Proctor & Gamble Co. vs. C. H. & D. Ry. Co., 19 I. C. C. Rep. 556; sustained in 188 Fed. Rep. 221, 228.

Cambria Steel Co. vs. B. & O. R. R. Co., 15 I. C. C. Rep. 484, 485.

§ 3. "Private Side Tracks" and "Private Cars" Defined.

A private side track, as this expression is used in the opinion In the Matter of Demurrage Charges on Privately Owned Tank Cars, is one which is not owned by the railroad, is outside the carrier's right of way, yards, or terminals, and to which the railroad has no right of use superior to the right of the shipper. This definition is

based, as it should be based, upon consideration of the carrier's right to the use of the track rather than the ownership of the land or rails. (See modification of definition, Confr. Rule 121.)

A private car is defined in the opinion as "a car owned and used by an individual, firm or corporation for the transportation of the commodities which they produce or in which they deal." It will include also cars owned and leased to shippers by private corporations. (Qualified by Confr. Rule 122.)

The rule as to demurrage charges on private tank cars is applicable to all other private cars used by the railroads and paid for on a mileage basis.

It is not the intention of the Commission that its ruling shall be given a retroactive effect. The demurrage question has been in a state of great confusion, and the desire of the Commission is to establish a uniform, fair and practicable system for the future. Claims for refund of demurrage charges previously collected in accordance with regular tariff rules will not be entertained with favor. (See Confr. Rules 123, 128, 222, and note to Rule 242; see also Rule 75 of Tariff Circular 18-A.)

Conf. Rulings Bull. No. 6, Ruling No. 79, June 2, 1908.

Conference Ruling No. 121, above referred to, amends the definition of a private side track to be "a private side track is one that is outside the carrier's right of way, yard and terminals, and of which the railroad does not own either the rails, ties, roadbed or right of way."

Conference Ruling No. 122, above referred to, amends the definition of a private car to be "a private car owned by one shipper but used with his consent by another shipper dealing in a different commodity is not a private car as that phrase has been defined by the Commission."

See citations of cases appended to Section 2 hereof.

§ 4. Incorporation in Tariffs of Amended Definition of Private Cars.

It is held that the amendment of the Commission, June 2, 1908, of its definition of a private car as used in the opinion "In the Matter of Demurrage Charges on Privately Owned Tank Cars" to include also cars owned and leased to shippers by private corporations, "shall be incorporated in all new car-service rules dealing with this subject, and that all rules shall be so amended as to include leased cars on or before the next fiscal year, July, 1909." The Commission rules, however, that upon the amendment of tariffs as indicated, such leased cars, under the conditions dealt with in Case No. 933, may be treated as private cars and be exempt from demurrage when standing on private tracks.

Conf. Rulings Bull. No. 6, Ruling No. 128, Dec. 10, 1908.

§ 5. Demurrage on Private Cars Temporarily Out of Service on Carrier's Storage Tracks.

Demurrage is a charge for detention of cars that have been set by carrier for loading or unloading. Private cars are subject to demurrage rules the same as is the carriers' equipment except when the private car is standing on the private side track. It is not necessary to charge demurrage either on carriers' equipment or private cars when the same are temporarily out of service and standing idle upon the storage tracks of the carrier unless provision for such charge is included in carriers' demurrage rules. (See Confr. Rules 79, 222, 270, and note to Rule 242; see also Rule 75 of Tariff Circular 18-A.)

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 123.

Proctor & Gamble Co. vs. C. H. & D. Ry. Co., 19 I. C. C. Rep. 556.

Central Commercial Co. vs. G. & S. I. R. R. Co., 23 I. C. C. Rep. 532.

See also—

I. C. C. Confr. Rulings Bull. No. 6, Rulings Nos. 79, 121, 128, 222.

§ 6. Derrick and Similar Construction Cars Are Not Ordinarily Subject to Demurrage Charges.

In the absence of specific tariff provision, demurrage does not accrue on derrick cars, pile-driver cars and similar cars that are not and ordinarily can not be unloaded, when owned or leased by a contractor doing construction work on the lines of the carrier concerned, or when standing upon storage tracks. (Qualifying Confr. Rule 222; see also Rule 123.)

Conf. Rulings Bull. No. 6, Ruling No. 270, Mar. 7, 1910.

§ 7. Demurrage on Private Cars Standing on Carrier-owned Track Especially Intended for Such Cars.

Collaterally, the Commission held in the Cudahy Packing Company case that the purpose of a demurrage charge, as often said, is to compel the prompt unloading and release of cars, and this is not only for the purpose of securing the use of the equipment, but also of relieving the track upon which that equipment must stand. Indeed, the congestion of the terminal is often a more serious matter for the railway than the mere loss of the use of the car. It would appear reasonable, therefore, that railways should be allowed to charge demurrage upon private cars when standing upon the tracks of the railway, and the Commission has so held.

Cudahy Packing Co. vs. C. & N. W. Ry. Co., 12 I. C. C. R. 446, 447.

§ 8. Differences in Free-Time Allowances Occasioned by Nature and Character of Commodity.

Prior to the Uniform Code of Demurrage Rules and Charges, different periods of free time were allowed. In some localities these amounted to 96-hour periods and in others 72 hours, and although the Commission held that under Section 2 of the act, prohibiting unjust discrimination in the transportation of a like kind of traffic, that these differences in free time did not constitute an unlawful discrimination within the meaning of that section where the traffic is of different kinds or classes not competitive with each other, the tendency of the Commission and the carriers is now to allow only such periods of free time as are essential to the prompt loading or unloading of traffic, and the purpose of the new rules is evidenced by the adherence to the 48-hour period as maximum.

Am. Warehousemen's Assn. vs. I. C. R. Co. et al., 7 I. C. C. R. 556.

If a shipment moves under one bill of lading it must be regarded as a unit, and demurrage charges can not begin to run until the carrier has performed its entire service in connection with the transportation of the shipment so covered. Hence, if such a shipment, moving under one bill of lading, occupies two cars, the carrier can not compel the consignee to accept one car until the arrival of the second, and, therefore, can not lawfully assess demurrage charges until it tenders the entire shipment to the consignee covered by the bill of lading.

Scudder vs. T. & P. R. Co. et al., 21 I. C. C. R. 60, 62.

Basin Supply Co. vs. T. & F. S. Ry. Co., 33 I. C. C. Rep. 157, 159.

§ 9. Interstate Commerce Commission on Demurrage Rules, Practices and Charges.

It is now the belief of those competent to judge that a faithful and conscientious application and adherence to the spirit and letter of the Uniform Code of Demurrage Rules will make possible the realization of a reasonable and uniform standard for the imposition of demurrage charges and put at an end those indifferent and pernicious practices which have caused so much of confusion and discrimination in the past. Much credit is due the Commission for the steadfastness with which it has held to its purpose to bring uniformity and equality out of the chaos and dissatisfaction of past demurrage regulations.

Lumber Rates from Memphis and other points to New Orleans, 27 I. C. C. Rep. 471, 479.

Alen Wood, Iron & Steel Co. vs. P. R. R. Co., 24 I. C. C. Rep. 27, 28.

C. R. R. Co. of N. J. vs. Hite, 166 Fed. 976, 979.

Peale, Peacock & Kerr vs. C. R. R. of N. J., 18 I. C. C. Rep. 25, 35.

Wilson Produce Co. vs. P. R. R. Co., 14 I. C. C. Rep. 170, 174.

Erie R. R. Co. vs. Wanaque Lumber Co., 75 N. J. L. 878, 881; 69 Atl. Rep. 168.

§ 10. Demurrage Rules Must be Just and Reasonable.

Since the amendment of the act of 1910, no question can arise as to the sufficiency of the mandate of the act that the carriers subject to the act must observe and enforce just and reasonable regulations and practices affecting rates, and all other matters relating to or connected with the receiving, handling, transporting, storing and delivery of property which may be necessary or proper to secure its safe and prompt receipt, hauling, transportation and delivery to include demurrage regulations and charges.

Michie vs. N. Y., N. H. & H. R. Co., 151 Fed. Rep. 694.

Pa. Millers' St. Assn. vs. P. & R. R. Co. et al., 8 I. C. C. R. 531.

Act to Reg. Com. (Amd. 1910). Sect. 1.

The question of reasonableness may arise as to the time allowed for loading or unloading (1) or the reasonableness of the charge imposed for the detention. (2)

Am. Warehousemen's Assn. vs. I. C. R. Co., 7 I. C. C. R. 556.

(1) *Pa. Millers' St. Assn. vs. P. & R. R. Co. et al.*, 8 I. C. C. R. 531.

(2) *Kehoe & Co. vs. C. & W. C. R. Co.*, 11 I. C. C. R. 166.

St. Louis H. & G. Co. vs. C. B. & Q. R. Co. et al., 11 I. C. C. R. 82.

Basin Supply Co. vs. T. & F. S. Ry. Co., 33 I. C. C. Rep. 157, 159.

Internl. Agricultural Corp. vs. A. & W. R. R. Co., 32 I. C. C. Rep. 199, 201.

Anderson-Tully Co. vs. M. L. & T. R. R. & S. S. Co., 30 I. C. C. Rep. 140, 145.

Industrial Railways Case, 29 I. C. C. Rep. 212, 213, 233, 237.

C. & N. W. Ry. Co. Reconsignment Rules, 29 I. C. C. Rep. 620, 621, 622, 623, 624, 625.

§ 11. Reasonableness of Demurrage Charges.

In re Advances in Demurrage the Commission declared that taking the country as a whole the present demurrage rate of \$1 per day is sufficient when honestly enforced, though there are undoubtedly instances in which this is not true.

The Commission early held that a charge of \$1 per car per day after allowance of proper free time was not unreasonable.

MacBride C. & C. Co. vs. C. St. P. M. & O. R. Co., 13 I. C. C. R. 571.

The detention of refrigerator cars, after 24 hours free time, is not unreasonable, under a charge of \$5 per car per day.

Waxelbaum vs. A. C. L. R. Co., 12 I. C. C. R. 178.

The usual charge of \$1 per car per day has frequently been upheld by the Commission. A demurrage scale of \$1 a day, after 48 hours' free time for the second 48 hours, \$3 per day for the third 48 hours, and \$4 per day for each

succeeding day or fraction thereof, in the Pittsburgh Produce Yard of the Pennsylvania Lines, where 90 per cent of the city's produce is received, and 85 per cent of such produce is sold from the cars, is held to be reasonable and nondiscriminative.

Wilson Prod. Co. et al. vs. Penna. R. Co., 14 I. C. C. R. 170.

See rehearing of same case in 16 I. C. C. R. 116.

After allowing a reasonable time for unloading cars, the carrier has a right to impose such charges for demurrage at its produce terminal as will render that terminal available for the purpose for which it was intended.

Wilson Prod. Co. vs. P. R. R. Co., 16 I. C. C. R. 116.

Rules providing for demurrage and storage charges at New Orleans upon shipments of forest products shipped on local bills of lading "for export" after ten days of free time, the same as upon other commodities shipped under like conditions, found to be neither unlawful nor unreasonable, nor unjustly discriminatory as compared with rules which do not provide for demurrage or storage charges upon shipments that are moved under through export bills of lading.

N. O. Bd. of Trade et al. vs. I. C. R. Co., 17 I. C. C. R. 496.

Track storage charges of \$1 per day, after first 48 hours, for second 48 hours, and \$2 per day per car for each succeeding day, prescribed by Commission to apply in New York City, upon hay, are not unreasonable when applied to oats.

Turnbull Co. vs. Erie R. Co., 17 I. C. C. R. 123.

Compare N. Y. H. Exchg. Assn. vs. P. R. R. Co., 14 I. C. C. R. 178.

A demurrage charge of \$2 per car per day was reduced to \$1 per day per car, after allowance of 48 hours' free time, on the Big Sandy & Cumberland Railroad.

Blankenship et al. vs. B. S. & C. R. Co., 17 I. C. C. R. 569.

In a case where the delay in unloading was no fault of the carrier, held, that demurrage was properly imposed.

Germain Co. vs. P. B. & W. R. Co. et al., 18 I. C. C. R. 96.

It is undoubtedly the right of the carrier to establish and maintain demurrage regulations under which a reasonable charge will accrue for detention of cars beyond a reasonable period. An obligation rests upon the carrier to so conduct its business that all of its patrons shall be accorded, without discrimination to any, the fullest and freest use of its equipment and facilities, and if coercive measures become necessary to accomplish that end they will be viewed with favor by the Commission so long as they are reasonable and subject none to undue prejudice or disadvantage.

Peale, Peacock & Kerr et al. vs. C. R. R. of N. J., 18 I. C. C. R. 25, 35.

In the transshipment of coal by water at Locust Point (Baltimore) and Curtis Bay, Md., as compared with the same traffic at Philadelphia, Pa., and St. George, Staten Island, N. Y., it would not be reasonable to require carriers to compute demurrage on an average of the time used by a consignee at all of the carriers' different ports, or to compute demurrage on an average for the year instead of for the month, or to include in the free time allowed the delays caused by the consignee's failure to have vessel ready to receive the coal, but unreasonable delays in transporting the coal to the ports by railroad should not cause demurrage against consignees. It is not unreasonable for carriers, in computing free time and demurrage, to count the change of ownership or reconsignment of the coal the same as unloading the car, if the original consignee is operating under the average plan; but it is

unreasonable to curtail the free time to which the car is entitled if the car is subject to straight demurrage time.

Lynah & Read et al. vs. B. & O. R. R. Co. et al., 18 I. C. C. R. 38.

Apropos of the question of reasonableness of the demurrage charge, it should not be so liberal in its application as to defeat the end sought to be attained.

Peale, Peacock & Kerr et al. vs. C. R. R. of N. J. et al., 18 I. C. C. R. 25.

Demurrage charges collected as result of carriers demanding rates in excess of those in their legally filed tariffs are unreasonably and unlawfully imposed and should be refunded, and this principle applies to cases in which such charges are collected on shipments as to which no rates are published.

Northern Lbr. Mfg. Co. vs. T. & P. Ry. Co. et al., 19 I. C. C. R. 54.

It has been held, and it is simple and obvious equity, that demurrage may not be assessed except for or because of failure on the part of the shipper or consignee to comply with his obligations.

Crescent Coal & Min. Co. vs. B. & O. R. R. Co. et al., 20 I. C. C. R. 569.

Rossie Iron Ore Co. vs. N. Y. C. & H. R. R. R. Co., 17 I. C. C. R. 392.

Am. Creosoting Wrks. vs. I. C. R. R. Co., 15 I. C. C. R. 160.

Porter vs. St. L. & S. F. R. R. Co., 15 I. C. C. R. 1.

N. Y. Hay Exchg. vs. P. R. R. Co., 14 I. C. C. R. 178.

Coomes & McGraw vs. C., M. & St. P. R. Co., 13 I. C. C. R. 192.

It is unreasonable to assess demurrage against a shipper because of the delivering line's refusal to accept the shipment.

Crescent Coal & Min. Co. vs. B. & O. R. R. Co. et al., 20 I. C. C. R. 570.

The assessment at New York City of track-storage charges for the same period during which demurrage charges are waived on account of weather interference held to be unjust and unreasonable.

Murphy Bros. vs. N. Y. C. & H. R. R. Co. et al., 21 I. C. C. R. 176.

In a case where negotiations were in process to establish contract for average plan of demurrage, and demurrage charges accrued pending the execution and acceptance by the carrier of security bond, the assessment of such demurrage in accordance with tariff provisions of the carrier was not unreasonable.

Washburn-Crosby Milling Co., Incp. vs. So. R. Co., 22 I. C. C. R. 465.

A demurrage charge of \$1 per car per day has been held not to be unreasonable by the federal courts in numerous cases.

Michie vs. N. Y., N. H. & H. R. Co., 151 Fed. Rep. 694.

Likewise by state courts—

Miller vs. Mansfield, 112 Mass. 260.

Miller vs. Ga. R. Co., 88 Ga. 563; 15 S. E. 316.

Ky. Wagon Mfg. Co. vs. Ohio & M. R. Co., 98 Ky. 152; 32 S. W. 595.

Schumacher vs. C. & N. W. R. Co., 207 Ill. 199; 69 N. E. 825.

N. & W. R. Co. vs. Adams, 90 Va. 393; 18 S. E. 673.

Penna. R. Co. vs. Midvale Steel Co., 201 Pa. 624; 51 Atl. 313.

Assessment of demurrage charges on coal consigned to and for the use of a common carrier, which accrued on account of that carrier's embargo against connecting line at destination, not found unreasonable or unjustly discriminatory.

Crescent Coal & Min. Co. vs. B. & O. R. R. Co., 23 I. C. C. R. 81.

Murphy Bros. vs. N. Y. C. & H. R. R. R. Co., 33 I. C. C. Rep. 355, 356.

N. Y. Hay Exchange Assn. vs. L. V. R. R. Co., 29 I. C. C. Rep. 90, 92.

Botsford & Barrett vs. P. R. R. Co., 29 I. C. C. Rep. 469, 470.

Internl. Agricultural Corp. vs. A. & W. P. R. R. Co., 32 I. C. C. Rep. 199, 201.

Mobile Chamber of Commerce vs. M. & O. R. R. Co., 32 I. C. C. Rep. 272, 281.

Lewis Mfg. Co. vs. D. & R. G. R. R. Co., 32 I. C. C. Rep. 488, 489.

§ 12. Status of Carrier and Shipper as Affecting Demurrage Charges.

There is no warrant in the common law for the theory that a carrier as a shipper over the lines of another carrier may enjoy or be given a preferred status, and that there is any intimation in the Act to Regulate Commerce that a carrier as a shipper has or may be given a status different from, or more advantageous than, that given to other shippers. In the opinion of the Commission, a railroad stands like any other shipper, and it is therefore unlawful to apply one rule when a shipment is for a railroad and a different rule when for a private individual, if the traffic is like in kind and the circumstances and conditions of transportation are substantially similar. Thus the carrier, in the matter of assessment of demurrage charges, when the consignee was not acting in the capacity of a carrier, but was the consignee of the property, and as a consignee was unable to, or did not, accept and unload the cars within the free time, then the imposition of demurrage against such carrier consignee was just and proper.

Crescent Coal & Min. Co. vs. B. & O. R. R. Co. et al., 23 I. C. C. R. 81.

Compare, Hitchman C. & C. Co. vs. B. & O. R. R. Co., 16 I. C. C. R. 512.

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 313.

§ 13. Efficiency of High Demurrage Charges.

The effect of high demurrage charges as compared with low demurrage in the prompt release of equipment is significantly illustrated by the report of the Pacific Car Demurrage Bureau for the six months ending October, 1911, under \$3 intrastate and \$1 interstate demurrage charges.

"The table below shows results at the three terminals of San Francisco, Oakland and Los Angeles; of all other stations in California and the totals of both for six months ending with October, 1911, under a \$3 rate on state traffic and a corresponding period under a \$6 rate on the same traffic. At the terminals named the percentage of state cars held overtime increased from 01.31 to 02.10, and the average delay in excess of free time from 1.56 to 1.70 days per car. At outside California stations the percentage of state cars held overtime increased from 00.84 to 01.18, and average delay in excess of free time from 1.79 to 2.24 days per car. At all California stations the percentage of state cars held overtime increased from 00.96 to 1.39, and the average delay in excess of free time from 1.71 to 2.06 days per car.

"With interstate cars on which the rate of \$1 has remained the same, the terminals show a decrease in the percentage held overtime, and a slight increase in delay after free time.

"The outside stations, as well as those with the terminals included, show decreases in the percentage of cars held overtime, and an average delay in excess of free time.

"A noticeable feature brought out more prominently because of the separation of cars handled at the three terminals and at the outside stations, respectively, lies in the higher proportion of both state and interstate cars held overtime at the terminals. For the six months end-

ing with October, 1911, there were 01.31 per cent of state cars held overtime at terminals, and 00.84 per cent at outside stations. Of interstate cars 08.77 per cent were held overtime at terminals, and 03.62 per cent at outside points. For the same period of 1911, and in the order named, there were 02.10, 01.18, 08.53 and 03.11 per cent held overtime.

"The results of seven months' actual application of a \$3 rate have, on the whole, been satisfactory, although the fact still remains that, as compared with a \$6 rate, a larger proportion of cars are held over the free period and for a longer time thereafter. However, whether viewed from a 'penalty' or 'earning capacity' standpoint, the \$3 rate is justifiable, and its general application throughout the country would almost make car famine and congested yards things of the past."

Six Months Ending with

	Cars Reported.	Cars		Per Cent of Cars		Ttl.
		Held Overtime.	Inter-	Held Overtime.	Inter-	
San Francisco, Oakland and Los Angeles.	State.	state.	State.	state.	State.	state.
October, 1910..	144,784	50,070	1,890	4,389	01.31	08.77
October, 1911..	149,831	52,114	3,140	4,444	02.10	08.53
Increase	5,047	2,044	1,250	55	00.79
Decrease	00.24
Other California Stations.						
October, 1910..	436,574	75,339	3,667	2,728	00.84	03.62
October, 1911..	494,721	80,167	5,814	2,497	01.18	03.11
Increase	58,147	4,828	2,147	00.34
Decrease	231	00.51
All California Stations.						
October, 1910..	581,358	125,409	5,557	7,117	00.96	05.68
October, 1911..	644,552	132,281	8,954	6,941	01.39	05.25
Increase	63,194	6,872	3,397	00.43
Decrease	176	00.43

In re Advance in Demurrage, 25 I. C. C. Rep. 314, 315.

§ 14. Adjustment of Demurrage Charges Accruing During Controversy Between Carriers.

Where a carrier provides in its tariff for reconsignment without any requirement for prepayment of freight or guaranty of the same it may not lawfully charge demurrage for time during which it holds the shipment while parleying with its connections as to advancement of its freight charges.

Beekman Lbr. Co. vs. St. L. S. W. R. Co., 14 I. C. C. R. 532.

Because of overcharge resulting from controversy between carriers and refusal of connecting line making delivery to receive shipment from initial line, demurrage charges were unlawfully assessed.

Germain Co. vs. N. O. & N. E. R. R. Co., 17 I. C. C. R. 22, 25.

In George L. Munroe & Sons vs. M. C. R. R. Co., 17 I. C. C. R. 27, 28, the Commission said:

"As we see this transaction the demurrage charges accrued through no fault of the shippers. The Michigan Central gave them a through bill of lading at the point of shipment on a through rate to destination. The demurrage charges were collected by the Norfolk & Western for detention of the car upon its tracks. It is stated in behalf of that carrier that delivery could not be made by it to the Norfolk & Southern, because charges were not prepaid to the point of delivery named in the bill of lading. Demurrage as a general rule is assessable against a carload shipment only at point of origin or destination, or at a reconsigning or transit point. We see no reason to doubt that an intermediate carrier by proper provisions in its tariffs may lawfully establish demurrage charges against a carload shipment which it is compelled to hold on its lines on account of the refusal of a connecting line to accept it for movement to destination because charges are

not prepaid; but a charge of this character is not the usual practice of carriers, and if established must be published in its tariffs in terms that admit of no doubt or ambiguity."

See also *Tioga Coal Co. vs. C. R. I. & P. Ry. Co. et al.*, 18 I. C. C. R. 414, 415.

§ 15. Adjustment of Demurrage Charges Accruing During Controversy Between Shipper and Carrier.

It is clear that a shipper may decline to pay more than the established rates, and if his refusal to do so results in nondelivery of shipments he is not responsible therefor and should not be required to pay demurrage for refusing to accept the same or to unload the cars. But since it is alike the duty of both carrier and shipper to strictly observe the established rates, and since no other can lawfully be applied, only confusion, detrimental alike to the carriers and their patrons generally, could result from countenancing the practice of consignees in refusing to accept shipments and to unload cars pending a contest or dispute as to the reasonableness of the established rates.

Coomes & McGraw vs. C., M. & St. P. R. Co. et al., 13 I. C. C. R. 192, 195.

Compare this holding with the decision of the Commission in *Porter vs. St. L. & S. F. R. R. Co.*, 15 I. C. C. R. 1, 5. The uncertainty of the holding in the *Coomes* case is cleared up by the *Porter* case, which follows the Conference Ruling of February 3, 1908.

"If the carrier had demanded only the lawful rate, the refusal of the shipper to pay more than what he claimed to be the contract rate—37 cents—would have relieved the carrier of blame in the subsequent negotiations. Because of this and because we believe our ruling of February 3, 1908 (Conference Rulings Bull. No. 6, Ruling No. 32),

announced merely what the law had always been, we find that all demurrage and other charges accrued and collected after the shipment reached destination were improperly assessed and should be refunded to the shipper." This, under a holding that the lawful rate was never quoted, charged or collected.

Porter vs. St. L. & S. F. R. R. Co., 15 I. C. C. R. 1, 5.

The delivering carrier is under obligation to collect demurrage charges assessed by it, although such charges may have accrued as the result of error on the part of another carrier. (See Conf. Ruling 220-f; see also note to Rule 242.)

The shipper should pay the lawfully published rate via the route over which the shipment moved, pending dispute, and then make claim for refund. The Commission, in the adjustment of misrouting claims, will not ordinarily include demurrage charges. (See Rule 220-e.)

When the delivering carrier demands more than the legal rate, the consignee is released from the obligation to pay demurrage charges accruing during the pendency of the dispute as to the lawful rate.

Conf. Rulings Bull. No. 6, Ruling No. 32, February 3, 1908.

A carrier may demand its legal charges before delivering freight, and demurrage accruing during a controversy as to such payment can not be refunded on that ground alone, but it must be shown that the charges demanded are unreasonable or unjustly discriminatory.

Fisk & Sons vs. B. & M. R. Co., 19 I. C. C. R. 299, 300.

Where demurrage charges accrue through the fault of the carrier, such as its refusal to deliver freight until exces-

sive charges are paid, the carrier must refund the charges so exacted.

- Schulz Co. vs. C., M. & St. P. R. Co., 20 I. C. C. R. 403, 405.
Porter vs. St. L. & S. F. R. Co., 15 I. C. C. R. 1.
Munroe & Sons vs. M. C. R. Co., 17 I. C. C. R. 27.
Platten Produce Co. vs. C. & N. W. Ry. Co., 25 I. C. C. Rep. 30, 31.

See also—

- Duhlmeier Bros. vs. P. Co., 27 I. C. C. Rep. 4.
In re Advances in Demurrage, 25 I. C. C. Rep. 314, 315.
Corp. of the Cath. of the Incarnation vs. L. I. R. R. Co., 25 I. C. C. Rep. 399.
Galveston Commercial Assn. vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 216, 222.
Horton, Trustee vs. E. R. R. Co., Unreported Op. A-87.
Metropolitan Lumber Co. vs. C. R. R. of N. J., Unreported Op. A-60.
Holden Co. vs. L. & N. R. R. Co., 21 I. C. C. Rep. 237, 238.
Jones Bros. Co. vs. M. & W. R. R. Co., 21 I. C. C. Rep. 577, 580.
Schulz Co. vs. C., M. & St. P. Ry. Co., 20 I. C. C. Rep. 403.
Fisk & Sons vs. B. & M. R. R. Co., 19 I. C. C. Rep. 299, 300.
Northern Lumber Mfg. Co. vs. T. & P. Ry. Co., 19 I. C. C. Rep. 54, 55.
Porter vs. St. L. & S. F. R. R. Co., 15 I. C. C. Rep. 5.
Coomes & McGraw vs. C., M. & St. P. Ry. Co., 13 I. C. C. Rep. 192, 195.
Beekman Lumber Co. vs. St. L. S. W. Ry. Co., 14 I. C. C. Rep. 532, 534, 535.
Dodds Lumber Co. vs. C. R. I. & P. Ry. Co., Unreported Op. 14.

§ 16. Switching Shipments Upon Which Transportation Charges Have Not Been Paid.

A shipment was forwarded with instructions to give delivery on a certain road. The car moved over the proper route to destination, and was tendered for switching to the road indicated in delivery directions. Under long-established custom, it declined to assume responsi-

bility for charges on the shipment and refused to accept the car until transportation charges had been paid. The carrier that brought the car in mailed a notice to the address of consignee, who was not known and before the difficulty was straightened out demurrage accrued; Held, That the demurrage charges lawfully accrued and should stand.

Conf. Rulings Bull. No. 6, Ruling No. 144, February 8, 1909.
Este Co. vs. A. C. L. R. R. Co., 34 I. C. C. Rep. 469, 470.

§ 17. Demurrage Charges Accruing During Construction of Private Siding.

Where demurrage accrued on cars, pending the negotiations preceding an agreement for the construction of and the actual construction of a private siding or switch track, which was consummated within 30 days, the Commission held such demurrage lawfully assessable as against the consignee.

Reiter, Curtis & Hill vs. N. Y. S. & W. R. R. Co., 19 I. C. C. R. 290, 291.

§ 18. Demurrage Charges Accruing Account "Bunching" of Cars.

Rule 8, Sect. B, Par. 1, of the National Code of Demurrage Rules provides that "when, by reason of delay or irregularity of the carrier in filling orders, cars are bunched or placed for loading in accumulated numbers in excess of the daily orders, the shipper shall be allowed such free-time for loading as he would have been entitled to had the cars been placed for loading as ordered," and "when, as the result of the act or neglect of any carrier, cars destined for one consignee, at one point, are bunched at originating point, in transit, or at destination, and delivered by the carrier line in accumulated numbers in excess of daily ship-

ments, the consignee shall be allowed such free-time as he would have been entitled to had the cars been delivered in accordance with the daily rate of shipment. Claim to be presented to carrier's agent within fifteen (15) days."

The Commission declined to condemn the absence from the Uniform Demurrage Code of provision against demurrage in case of bunching under the average plan.

Alan Wood, Iron & Steel Co. vs. P. R. R. Co., 24 I. C. C. Rep. 27, 31.

The Commission has held, in a recent case, that a rule providing for exemption from demurrage charges when the same accrued on account of bunching, should be incorporated in the carrier's tariff.

American Hay Co. vs. C. V. Ry. Co., 29 I. C. C. Rep. 659, 660.

Upon an informal complaint that cars were delayed in transit and delivered by a carrier in such number as to exceed the shipper's facilities for unloading within the free time; Held, That tariffs ought to contain a rule providing that when, by fault of the carrier, cars are bunched in excess of the shipper's or consignee's ability to handle them within the free time, demurrage will not accrue. In the absence of such a rule the Commission can determine the reasonableness of such a practice only upon complaint filed. (See note to Rule 242, Conf. Rulings Bull. No. 6.)

Conf. Rulings Bull. No. 6, Ruling No. 142, February 8, 1909.

There is nothing unreasonable or unlawful about a tariff rule which provides that in the event of the carriers bunching a shipper's cars and delivering them in excess of the shipper's facilities and ability to load or unload, demurrage will not accrue.

Am. Creosoting Wrks., Ltd. vs. I. C. R. Co. et al., 15 I. C. C. R. 160.

If the shipper had no voice in directing the setting in of more than four cars per day (that number being the number per day mentioned in the shipper's order for empties), or if it were shown that the shipper protested against the setting in of cars in excess of that number at one time, and in his voice and protest had been ignored, there might be room to find that the demurrage charges resulting, were unjust and unreasonable.

Am. Creosoting Wrks., Ltd. vs. I. C. R. Co. et al., 15 I. C. C. R. 160.

A large number of cars held outside private side tracks awaiting delivery, due to complainant having more business than facilities to handle it, does not constitute a "bunching in transit" by the delivering line.

Brooklyn Cooperage Co. vs. I. C. R. Co., 22 I. C. C. R. 358.

See also—

Galveston Commercial Assn. vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 216, 230.

In re Advances in Demurrage, 25 I. C. C. Rep. 314, 315.

Murphy Bros. vs. N. Y. C. & H. R. R. Co., 21 I. C. C. Rep. 176, 177.

Commercial Exchange of Philadelphia vs. P. R. R. Co., 21 I. C. C. Rep. 1, 4.

Schultz-Hansen Co. vs. S. P. Co., 18 I. C. C. Rep. 234, 237.

Lynah & Read vs. B. & O. R. R. Co., 18 I. C. C. Rep. 38, 45.

Peale, Peacock & Kerr vs. C. R. R. of N. J., 18 I. C. C. Rep. 25, 36.

New Orleans Board of Trade vs. I. C. R. R. Co., 17 I. C. C. Rep. 496, 502.

Murphy Bros. vs. N. Y. C. & H. R. R. Co., 17 I. C. C. Rep. 457, 460.

§ 19. Notification—Free Time and Placement as Affecting Demurrage Charges.

The shipper is entitled to a reasonable time in which to load or unload and the transportation rate contemplates

such free time. The National Code of Demurrage Rules provides, in Rule 4, that "notice shall be sent or given to consignee by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within twenty-four hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car. In case car is not placed on public delivery-track within twenty-four hours after notice of arrival has been sent or given, a notice of placement shall be sent or given to consignee.

"When cars are ordered stopped in transit notice shall be sent or given the party ordering the cars stopped upon arrival of cars at point of stoppage.

"Delivery of cars upon private or industrial interchange tracks, or written notice sent or given to consignee of readiness to so deliver, will constitute notification thereof to consignee.

"In all cases where notice is required the removal of any part of the contents of a car by the consignee shall be considered notice thereof to the consignee."

These provisions are supplemented by Rule 5 of the National Code of Demurrage Rules, to the following effect:

"Placing Cars for Unloading. Section A.—When delivery of cars consigned or ordered to any other than public-delivery tracks or to industrial interchange tracks cannot be made on account of the act or neglect of the consignee, or the inability of the consignee to receive, delivery will be considered to have been made when the cars were tendered. The carrier's agent must send or give the consignee written notice of all cars he has been unable to deliver because of the condition of the private or interchange tracks, or because of other conditions

attributable to consignee. This will be considered constructive placement. See Rule 4 (Notification).

"Section B.—When delivery can not be made on specially designated public-delivery tracks on account of such tracks being fully occupied, or from other cause beyond the control of the carrier, the carrier shall send or give the consignee notice in writing of its intention to make delivery at the nearest point available to the consignee, naming the point. Such delivery shall be made unless the consignee shall, before delivery, indicate a preferred available point, in which case the preferred delivery shall be made."

This is followed with a similar rule governing the placement of cars for loading:

"Rule 6. Cars for Loading. Section A.—Cars for loading will be considered placed when such cars are actually placed or held on orders of the consignor. In the latter case the agent must send or give the consignor written notice of all cars which he has been unable to place because of condition of the private track or because of other conditions attributable to the consignor. This will be considered constructive placement.

See Rule 3, Sect. A (Computing Time).

"Section B.—When empty cars, placed for loading on orders, are not used, demurrage will be charged from the first 7 A. M. after placing or tender until released, with no time allowance."

In assessing demurrage charges against shippers who detain cars beyond the free time allowed, the carriers compute time from 7 o'clock of the morning of the day following the placement of the car until released. In a case where the consignee alleged to have failed to receive a mailed notice of arrival, it was held by the Commission

that the carrier's duty was performed when evidence was produced that the latter had placed in the mail a notice of arrival, and the accrued demurrage was approved.

Ohio Iron & Metal Co. vs. E. J. & E. Ry. Co., 34 I. C. C. Rep. 75.

National Casket Co. vs. S. Ry. Co., 31 I. C. C. Rep. 678, 692.

Alexander vs. S. Ry. Co., 25 I. C. C. Rep. 32.

Notice of arrival does not constitute constructive placement, however, where the car is not held by the carrier on account of the consignee's inability to receive it.

Northern Wisconsin Produce Co. vs. M. St. P. & S. S. M. Ry. Co., 21 I. C. C. Rep. 197, 198.

Demurrage charges have been held to be unlawfully assessed where carrier failed to notify the consignee of the arrival of cars.

Rossie Iron Ore Co. vs. N. Y. C. & H. R. R. Co., 17 I. C. C. R. 392.

It is not unreasonable for carriers, in computing free time and demurrage, to count the change of ownership or reconsignment of the coal the same as unloading the car, if the original consignee is operating under the average plan; but it is unreasonable to curtail the free time to which the car is entitled, if the car is subject to straight demurrage time.

Lynah & Read et al. vs. B. & O. R. R. Co. et al., 18 I. C. C. R. 38.

The "arrival of car" from which free time is computed should be 7 A. M. of the day after the date on which the car arrives, or after the day on which written notice of arrival of car is sent.

Lynah & Read et al. vs. B. & O. R. R. Co. et al., 18 I. C. C. R. 38.

Interpretative of the rule in the National Association of Railway Commissioners' Demurrage Code—"In computing time, Sundays and legal holidays (national, state and municipal) will be excluded"—the Commission held the counting of Saturday afternoons as part of the free time allowed for loading, or in connection with loading or unloading, not to be unreasonable. It declares that 24 hours free time shall be allowed when cars are held for reconsignment or switching orders.

Where upon the facts shown the order was not given until after the 24 hours free time had elapsed, for the excess over and above such free time, demurrage was chargeable. The 48 hours free time for unloading was still allowable after the car had been placed in position for unloading at the consignee's warehouse.

Roden Grocery Co. vs. A. G. S. R. Co., 21 I. C. C. R. 469, 471.

The counting of Saturday afternoons as part of the free time allowed for loading or unloading after placement and notice, under the uniform demurrage rules, not shown to operate in an unreasonable or unlawful manner in the Philadelphia territory.

Coml. Exchg. of Phila. vs. P. R. Co. et al., 21 I. C. C. R. 1, 4.

Demurrage rules in force at the time of shipment provided that when delivery of cars consigned or ordered to a private track cannot be made on account of inability of consignee to receive, delivery will be considered to have been made when the cars are tendered. Upon the facts it was shown that car was not held because of shipper's inability to receive, and, therefore, the notice of its arrival did not constitute constructive placement within the meaning of that term as defined in the carrier's tariff.

Nor. Wisconsin Prod. Co. vs. M., St. P. & S. S. M. R. Co.,
21 I. C. C. R. 197, 198.

Under an "order-notify" bill of lading containing the provision—"The surrender of this original order bill of lading properly indorsed shall be required before the delivery of the property"—the car was not subject to delivery to the consignee, and the carrier could not lawfully have made such delivery, until the surrender of the bill of lading. Delivery, according to the obligations assumed in the bill of lading, was accomplished when the car was placed upon the carrier's team track at destination, and notice given to consignee.

Under the demurrage rules 48 hours free time are allowed for loading or unloading. This is a general provision applying to all cases.

See also—

- I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 313.
- Galveston Commercial Assn. vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 27, 31.
- In re Advances in Demurrage, 25 I. C. C. Rep. 314, 316.
- Alan Wood, Iron & Steel Co. vs. P. R. R. Co., 24 I. C. C. Rep. 27, 32.
- Alexander vs. S. Ry. Co., 25 I. C. C. Rep. 32, 33.
- Alexander vs. S. L. & S. F. R. R. Co., 24 I. C. Rep. 253.
- Murphy Bros. vs. N. Y. C. & H. R. R. R. Co., 21 I. C. C. Rep. 176, 177.
- Commercial Exchange of Philadelphia vs. P. R. R. Co., 21 I. C. C. Rep. 1, 4.
- Schultz-Hansen Co. vs. S. P. Co., 18 I. C. C. Rep. 234, 237.
- Lynah & Read vs. B. & O. R. R. Co., 18 I. C. C. Rep. 38, 45.
- Peale, Peacock & Kerr vs. C. R. R. of N. J., 18 I. C. C. Rep. 25, 36.
- New Orleans Board of Trade vs. I. C. R. R. Co., 17 I. C. C. Rep. 496, 502.
- Murphy Bros. vs. N. Y. C. & H. R. R. R. Co., 17 I. C. C. Rep. 457, 460.
- Rossie Iron Ore Co. vs. N. Y. C. & H. R. R. R. Co., 17 I. C. C. Rep. 392, 393.
- Germain Co. vs. P. B. & W. R. R. Co., 18 I. C. C. Rep. 96, 97.

§ 20. Demurrage Charges Against Logging Road.

Under a tariff providing—"When cars are interchanged with minor railroads or industrial plants performing their own switching service, handling cars for themselves or other parties, an allowance of 24 hours will be made for switching in addition to the regular time allowed for loading and unloading"—demurrage charges were properly demanded and collected in accordance therewith from a logging road, whose failure to move cars to junction point with standard carrier was occasioned by unsafe condition of logging road occasioned by heavy rains.

Drummond & S. W. R. Co. vs. C. St. P. M. & O. R. Co., 21 I. C. C. R. 567, 568.

§ 21. Demurrage on Carload Shipment Transferred Into Two Cars.

When a shipment leaves a point of origin in a single car and for the convenience of the carriers is transferred in transit into two cars and is subsequently detained by consignee at destination beyond the free time, demurrage should be assessed as for one car only, so long as either car is detained.

Conf. Rulings Bull. No. 6, Ruling Nos. 250 and 357.
Compare, Rule 273, Conf. Rulings Bull. No. 6.

Demurrage and switching charges were assessed on each of two cars into which a single carload shipment had been transferred en route, because a point of destination was located on a narrow-gauge track; Held, That the shipment should be treated as a one-car shipment for the purpose of assessing demurrage and switching charges.

Kay Co. vs. D. & R. G. R. R. Co., 21 I. C. C. R. 239.
Scudder vs. T. & P. Ry. Co. et al., 21 I. C. C. R. 60, 62.

See also—

Hartford Canning Co. vs. C., M. & St. P. Ry. Co., Unreported Op. 288.

§ 22. Effect of Flood—"Act of God"—Upon Accrued Demurrage Charges.

The Commission held the assessment of demurrage charges not unreasonable nor unjust in a case where on account of damage to the shipper's mill and stock, occasioned by flood, the shipper was unable to receive and unload promptly certain inbound shipments, although carriers were in a position to make deliveries.

Riverside Mills vs. C. & W. C. R. Co. et al., 20 I. C. C. R. 153.

§ 23. Act to Regulate Commerce Transcends Contract Relating to Demurrage.

The right of the shipper or carrier to contract with respect to the collection of demurrage charges is done away with by the Act to Regulate Commerce, and sole authority with respect thereto is lodged in the Commission.

Peale, Peacock & Kerr et al. vs. C. R. R. of N. J. et al., 18 I. C. C. R. 25, 33.

§ 24. Demurrage on Refused Shipments.

It is the general rule of law that consignees should not refuse to accept shipments tendered to them by the carrier in accordance with the terms of the contract of transportation. And it is not a successful ground upon which to oppose the accrual of demurrage charges by the consignee refusing to accept his shipment.

In a case where demurrage charges were assessed because of detention of car caused by refusal of "order-notify-consignee" to accept shipment, the Commission held that it could see no reason why the carrier that has completed the contract of carriage, and has delivered a shipment to consignee thereof, who has surrendered bill of lading and accepted shipment, should again accept cus-

tody of and liability for the shipment, just because consignee alleges that the commodity is not of the grade or quality agreed upon between himself and his consignor. Nor will the Commission impose upon the carrier the duty of telegraphing the consignor in the event shipment is refused or consignee can not be found.

Kehoe & Co. vs. N. C. & St. L. Ry. Co., 14 I. C. C. Rep. 555, 556.

Nor may the uncertainty of a consignee as to whether or not he will accept a damaged shipment justify the carrier in waiving the demurrage charges accruing on the shipment pending the consignee's decision.

I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 451.

See also—

- In re Advances in Demurrage, 25 I. C. C. Rep. 314, 315.
- Corp. of Cath. of the Incarnation vs. L. I. R. R. Co., 25 I. C. C. Rep. 399, 400.
- Crescent Coal & Mining Co. vs. B. & O. R. R. Co., 23 I. C. C. Rep. 81, 82.
- Riverside Mills vs. C. & W. C. Ry. Co., 20 I. C. C. Rep. 153, 155.
- Reiter, Curtis & Hild vs. N. Y. S. & W. R. R. Co., 19 I. C. C. Rep. 290, 292.
- Hutchinson-McCandish Coal Co. vs. B. & O. R. R. Co., 16 I. C. C. Rep. 360, 362.
- Horton, Trustee vs. Erie R. R. Co., Unreported Op. A-87.
- Caddell & Sons vs. C. & S. Ry. Co., Unreported Op. 177.

§ 25. Demurrage on Astray Shipments.

An astray shipment of perishable merchandise was not rebilled to its proper destination, but was sold by the consignee at the point where he found it. The delivering carrier at that point had assessed demurrage charges before the shippers were able to locate the car. That carrier expressed its willingness to waive the demurrage if the Commission would permit. Held, that demurrage

charges stand in the same light as transportation charges and may be adjusted under Confr. Rule 217.

Conf. Rulings Bull. No. 6, Ruling No. 31, January 15, 1908.

Instances occur in which, through error or oversight on the part of some agent or employee, a shipment is billed to an erroneous destination or is unloaded short of destination or is carried by. The Commission is of the opinion that in bona fide instances of this kind carriers may return such astray shipments to their proper destination or course without the assessment of additional charges, and may arrange for such movement of such astray shipments for each other on mutually acceptable terms without the necessity of publishing, posting, and filing tariff under which it will be done. (See Confr. Rules 31 and 240.)

Complete distinction must be observed between cases to which this rule applies and those provided for under Confr. Rule 214.

Conf. Rulings Bull. No. 6, Ruling No. 217, May 6, 1907.
I. C. C. Confr. Rulings Bull. No. 6, Ruling No. 261.

§ 26. Demurrage on f. o. b. Shipments.

A purchased a carload of lumber f. o. b. at the milling point. Demurrage accrued on account of the failure of B, the mill owner, to promptly load the car. Carrier inadvertently delivered the car to A without collecting the demurrage. Upon its inquiry as to whether to demand the demurrage from A or B: Held, that the demurrage must be collected by the carrier either from the vendor or vendee, but that the Commission can not undertake to investigate the facts and determine for the carrier whether the vendor or the vendee is liable for the charges. (See note to Confr. Rule 242.)

Conf. Rulings Bull. No. 6, Ruling No. 96, October 12, 1908.

§ 27. Demurrage Charges Resulting from Strikes.

The Commission has no power to relieve carriers from the obligations of tariffs providing for demurrage charges, on the ground that such charges have been occasioned by a strike. (See note to Confr. Rule 242.)

Confr. Rulings Bull. No. 6, Ruling No. 8, November 18, 1907.
Am. Hay Co. vs. C. V. Ry. Co., 29 I. C. C. Rep. 659, 633.

§ 28. Demurrage Charges Accruing from Tender of Check in Payment of Freight Charges.

Demurrage charges may not be lawfully refunded which have accrued by reason of a shipper, who had customarily paid his freight charges in checks, but where the carrier had issued a general order requiring payment of freight charges in cash, during temporary financial disturbance, tendering the agent of the carrier a check in payment of freight charges and the delay occasioned by the agent's endeavors to procure from the home office of the carrier authority to accept the shipper's check.

Conf. Rulings Bull. No. 6, Ruling No. 39, March 3, 1908.

§ 29. Demurrage Charges Accruing Under Average Plan.

It would not be reasonable to require carriers to compute demurrage on an average of the time used by a consignee at all of the carriers' ports, or to compute demurrage on an average for the year instead of for the month, or to include in the free time allowed the delays caused by consignee's failure to have vessel ready to receive the property transported. But unreasonable delays in transporting the commodity to the ports by the carriers should not cause demurrage against the consignee. Nor is it unreasonable for carriers, in computing free time and demurrage, to count the change of ownership or recon-

signment of the shipment the same as unloading the car, if the original consignee is operating under the average plan; but it is unreasonable to curtail the free time to which the car is entitled, if the car is subject to straight demurrage time.

Lynah & Read et al. vs. B. & O. R. Co. et al., 18 I. C. C. R. 38.

Cancellation of average plan of demurrage and its subsequent reestablishment, with demurrage accruing in the interim, not deemed unlawful as affecting such demurrage charges.

Friend Paper Co. vs. C. C. C. & Ct. L. R. Co., 18 I. C. C. R. 178.

The Commission has declined to extend the average plan period to one year.

Peale, Peacock & Kerr et al. vs. C. R. R. of N. J. et al., 18 I. C. C. R. 25.

The provision in the tariff in respect to the assessment of average demurrage is a concession from the straight demurrage charge in favor of the shipper or receiver, a modification of a stringent rule that inures to the benefit of shippers and receivers, and is a privilege or option extended on the part of the carrier to those who will comply with the conditions named in the tariff. Obviously, the requirement of a bond with sufficient security was intended to relieve the carrier not only from loss, but also from the vexatious pursuit of those in default. Such a requirement is not unreasonable.

Washburn-Crosby Milling Company, Incrp. vs. S. Ry. Co., 22 I. C. C. R. 465, 466.

Where a shipper or receiver enters into an average demurrage agreement with a rail carrier on the basis of

five free days per car, and also enters into a contract for certain boats, and with full knowledge that demurrage would accrue under the agreement unless boats were tendered and cars matched against them, the fact that boats were not furnished, even though owing to adverse weather conditions, is not sufficient to relieve such shipper from the payment of such demurrage charges. To so hold "would make the assessment of demurrage charges more or less a matter of uncertainty rather than of accurate determination." Under such a rule it would be necessary in each case for some one to decide whether a carrier would have unloaded the cars if boats had been furnished and whether the consignee would have furnished the boats if the carrier could have filled them. The carrier could in any case remit demurrage by simply declaring that it could not have loaded the boats if they had been furnished.

Hutchinson-McCandlish Coal Co. vs. B. & O. R. R. Co. et al.,
16 I. C. C. R. 360, 362.

Galveston Commercial Assn. vs. A. T. & S. F. Ry. Co., 25 I. C.
C. Rep. 216, 231.

Alan Wood, Iron & Steel Co. vs. P. R. R. Co., 24 I. C. C.
Rep. 27, 28.

Picher Lead Co. vs. St. L. & S. F. R. R. Co., 35 I. C. C. Rep.
45, 46.

§ 30. Point at Which Demurrage Accrues; Unity of Shipment Impaired.

Demurrage does not ordinarily accrue except upon delivery of cars at the point specified in the bill of lading, and where charges are imposed for detention of cars at a point other than that specified, there must be definite tariff authority therefor.

U. S. vs. D. & R. G. R. Co., 18 I. C. C. R. 7, 9.

Germain Co. vs. N. O. & N. E. R. Co., 17 I. C. C. R. 22.

Munroe & Sons vs. M. C. R. R. Co., 17 I. C. C. R. 27.

It seems clear that where a shipment moves under one bill of lading it must be regarded as a unit, and demurrage charges would not begin to run until the carrier has performed its entire service in connection with the transportation of the shipment so covered, and that under the terms of the rule a carrier does not hold a car "for the consignee for unloading" until the entire shipment covered by the bill of lading is tendered for delivery. A carrier may insist on issuing a separate bill of lading for each car, but if it issues but one bill of lading for a shipment consisting of two or more cars it cannot collect demurrage until the whole shipment is tendered for delivery. It is unnecessary to add that as between shippers, the carriers should pursue a policy of uniformity in this matter and thus avoid the charge of undue discrimination in connection therewith.

Scudder vs. T. & P. R. Co. et al., 21 I. C. C. R. 60, 62.

The Scudder case ruling was modified as to matters other than demurrage charges in 22 I. C. C. R. 60.

In a recent Conference Ruling of the Commission it is provided:

"Upon inquiry and to remove the confusion that exists among carriers and shippers, it is held: That demurrage and storage in transit are controlled by the tariff in effect when the initial movement begins; that demurrage on outbound shipments is controlled by the tariff in effect when the car is actually set for loading; that demurrage and track storage at destination are controlled by the tariff in effect when the car is actually and constructively set for unloading; and that off-track storage by carrier at destination, in its warehouse or otherwise, is controlled by the tariff in effect at the time such storage begins."

Shipments detained before reaching destination may be held, as a matter of law, subject to the demurrage tariffs applicable at the point of destination.

Berwick-White Coal Mining Co. vs. C. & E. R. R. Co., 235 U. S. 371.

§ 31. Reconsignment in Connection with Demurrage.

Cars held for reconsignment are subject to regular demurrage charges, and under the National Code of Demurrage Rules but twenty-four hours is allowed for reconsigning.

It is not unreasonable for carriers, in computing free time and demurrage, to count the change of ownership or reconsignment of the shipment the same as unloading the car, if the original consignee is operating under the average plan; but it is unreasonable to curtail the free time to which the car is entitled if the car is subject to straight demurrage time.

Lynah & Read et al. vs. B. & O. R. R. Co. et al., 18 I. C. C. R. 38.

Where demurrage charges accrued at billed destination, under apparently fictitious billing, before reconsignment on account of the nonpayment of reconsignment charges, and such reconsignment charges were in accordance with tariff authority, such demurrage charges were upheld by the Commission.

Sage & Co. vs. I. C. R. R. Co., 18 I. C. C. R. 195.

Where the shipper made every reasonable effort to effect the reconsignment of his shipment before reaching the reconsigning point, under a reconsigning rule of the carrier permitting him to do so, and agent of Fast Freight Line over the route of shipment acknowledged the reconsignment orders before the car reached the reconsigning point, the demurrage charges which accrued because of the carrier's failure to observe and carry out the shipper's

reconsignment orders, were declared unlawful, and refund thereof ordered.

Hanley Milling Co. vs. Penna. Co., 19 I. C. C. R. 475, 477.

§ 32. Waiver of Demurrage Charges and Causes Therefor.

No demurrage charges shall be collected under the National Code of Demurrage rules for detention of cars through causes named below. Demurrage charges assessed or collected under such conditions shall be promptly cancelled or refunded by the carrier.

"Section A.—Weather interference.

"1. When the condition of the weather during the prescribed free time is such as to make it impossible to employ men or teams in loading or unloading, or impossible to place freight in cars, or to move it from cars, without serious injury to the freight, the free time shall be extended until a total of 48 hours free from such weather interference shall have been allowed.

"2. When shipments are frozen while in transit so as to prevent unloading during the prescribed free time. This exemption shall not include shipments which are tendered to consignee in condition to unload. Under this rule consignees will be required to make diligent effort to unload such shipments.

"3. When, because of high water or snowdrifts, it is impossible to get to cars for loading or unloading during the prescribed free time.

"This rule shall not absolve a consignor or consignee from liability for demurrage if others similarly situated and under the same conditions are able to load or unload cars.

"Section B.—Bunching.

"1. Cars for loading.—When, by reason of delay or ir-

regularity of the carrier in filling orders, cars are bunched and placed for loading in accumulated numbers in excess of daily orders, the shipper shall be allowed such free time for loading as he would have been entitled to had the cars been placed for loading as ordered.

"2. Cars for unloading or reconsigning.—When, as the result of the act or neglect of any carrier, cars destined for one consignee, at one point, are bunched at originating point, in transit, or at destination, and delivered by the carrier line in accumulated numbers in excess of daily shipments, the consignee shall be allowed such free time as he would have been entitled to and the cars been delivered in accordance with the daily rate of shipment. Claim to be presented to carrier's agent within fifteen (15) days.

"Section C.—Demand of overcharge.

"When the carrier's agent demands the payment of transportation charges in excess of tariff authority.

"Section D.—Delayed or improper notice by carrier.—When notice has been sent or given in substantial compliance with the requirements as specified in these rules, the consignee shall not thereafter have the right to call in question the sufficiency of such notice unless within forty-eight hours from 7 a. m. following the day on which notice is sent or given he shall serve upon the delivering carrier a full written statement of his objections to the sufficiency of such notice.

"1. When claim is made that a mailed notice has been delayed, the postmark thereon shall be accepted as indicating the date of the notice.

"2. When a notice is mailed by carrier on Sunday, a legal holiday, or after 3 p. m. on other days (as evidenced by the postmark thereon), the consignee shall be allowed five hours' additional free time, provided he shall mail or send to the carrier's agent, within the first twenty-four

hours of free time, written advice that the notice had not been received until after the free time had begun to run; in case of failure on the part of consignee so to notify carrier's agent, no additional free time shall be allowed.

"Section E.—Railroad errors which prevent proper tender or delivery.

"Section F.—Delay by United States Customs.—Such additional free time shall be allowed as has been lost through such delay."

National Code of Demurrage Rules. Rule 8.

Section 6 of the Act to Regulate Commerce requires all carriers subject thereto to publish, post, and file with the Commission, schedules or tariffs separately stating all terminal charges and all other charges which the Commission may require, and all rules and regulations which may, in any wise, change, affect, or determine the aggregate compensation paid for transportation or terminal services.

Act to Reg. Com. (Amd. 1910), Sect. 6, Par. 1.
See Rule 75, Tariff Circular 18-A.

It is, therefore, the duty of each carrier subject to the Act to Regulate Commerce to publish its demurrage charges, and any rule or regulation which makes any concession or affects a suspension of such charges.

Am. Warehousemen's Assn. vs. I. C. R. Co. et al., 7 I. C. C. R. 556.

§ 33. Carrier's Rules Permitting Suspension or Waiver of Demurrage Charges Must Be Published.

Demurrage is a terminal charge for transportation service within the meaning of Section 6 of the Act to Regulate Commerce, as amended, which requires filing with the Interstate Commerce Commission, and the printing and

keeping open for public inspection of schedules showing all the rates, fares, and charges for transportation.

- Sect. 16, Act to Regulate Commerce as amended.
L. V. R. R. Co. vs. U. S., 188 Fed. Rep. 879, 885.
Am. Hay Co. vs. C. V. Ry. Co., 29 I. C. C. Rep. 659, 660.
Crescent Coal & Mining Co. vs. B. & O. R. R. Co., 20 I. C. C. Rep. 559, 569.
Beekman Lumber Co. vs. La. Ry. & Nav. Co., 19 I. C. C. Rep. 343, 347.
Tioga Coal Co. vs. C. R. I. & P. Ry. Co., 18 I. C. C. Rep. 414, 415.
Peale, Peacock & Kerr vs. Central R. R. Co. of N. J., 18 I. C. C. Rep. 25, 33.
U. S. vs. D. & R. G. R. R. Co., 18 I. C. C. Rep. 7, 9.
Germain Co. vs. N. O. & N. E. R. R. Co., 17 I. C. C. Rep. 22.
Munroe & Sons vs. M. C. R. R. Co., 17 I. C. C. Rep. 27.
Beekman Lumber Co. vs. S. L. S. W. Ry. Co., 14 I. C. C. Rep. 532, 534.

Demurrage may neither be lawfully assessed nor waived except in accordance with tariff authority.

§ 34. Discrimination Between Shippers in the Waiver of Demurrage Charges Prohibited by Law.

Where a carrier undertakes to make any concessions in the collection of demurrage charges from shippers, it must grant such privileges to all shippers alike under the same or similar circumstances and conditions.

- Am. Warehousemen's Assn. vs. I. C. R. R. Co. et al., 7 I. C. C. R. 556.
Basin Supply Co. vs. T. & S. F. Ry. Co., 33 I. C. C. Rep. 157, 159.
Murphy Bros. vs. N. Y. C. & H. R. R. R. Co., 33 I. C. C. Rep. 355, 356.
Internl. Agricultural Corp. vs. A. & W. P. R. R. Co., 32 I. C. C. Rep. 199, 201.
Lewis Mfg. Co. vs. D. & R. G. R. R. Co., 32 I. C. C. Rep. 488, 489.
Anderson-Tully Co. vs. M. L. & T. R. R. & S. S. Co., 30 I. C. C. Rep. 140.

- Hollingshead & Blei Co. vs. P. Co., 25 I. C. C. Rep. 38, 39.
Galveston Commercial Assn. vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 216, 227, 232.
Thompson vs. A. T. & S. F. Ry. Co., 25 I. C. C. Rep. 174, 178.
Benisch Bros. vs. L. I. R. R. Co., 25 I. C. C. Rep. 439, 440.
Lynah & Read vs. B. & O. R. R. Co., 18 I. C. C. Rep. 38, 44.
Friend Paper Co. vs. C. C. C. & St. L. Ry. Co., 18 I. C. C. Rep. 178, 179.
Industrial Railways Case, 29 I. C. C. Rep. 212, 213, 237.
N. Y. Hay Exchange Assn. vs. L. V. R. R. Co., 29 I. C. C. Rep. 90, 92.
Am. Hay Co. vs. C. V. Ry. Co., 29 I. C. C. Rep. 659.
(See "Discrimination.")

§ 35. Waiver of Demurrage Charges Under Special Circumstances.

A side track to an industry upon which a carrier had delivered 18 heavily loaded cars sank because of the marshy character of the roadbed, held: That the carrier may refund demurrage collected for the necessary detention of the cars while the side track was being rebuilt.

Conf. Rulings Bull. No. 6, Ruling No. 117, November 13, 1908.

§ 36. Waiver Account of Proceeds of Sale of Freight for Transportation Charges Not Sufficient to Pay Demurrage Charges.

In passing upon the validity of a tariff containing the rule—"When freight can not be disposed of at point held for sufficient amount to realize by sale both freight and car service, or storage charges, demurrage charges may be refunded, waived, or canceled"—the Commission held that the performance of a transportation service determines the obligation of the carrier to collect and of the shipper to pay the published rates therefor and no subsequent fact, having no relation to the service, can lawfully be made the basis for a refund or other departure from such

rates. The provision is therefore unlawful per se and can not be accepted as authority for a waiver, refund, or cancellation of the tariff charges even as to a shipment made while the provision was contained in the published tariff. (See note to Confr. Rule 242; compare Rule 41.)

Conf. Rulings Bull. No. 6, Ruling No. 145, February 8, 1909.

To hold otherwise would be to render nugatory one of the primary principles of the act—that the carrier must exhaust all its legal remedies in compelling the payment by the shipper of legally established rates.

§ 37. Waiver of Demurrage Charges Account “Bunching of Cars in Transit.”

The National Code of Demurrage Rules contains the following provision for the waiver of demurrage charges account “bunching of cars in transit”:

“When, as the result of the act or neglect of any carrier, cars destined for one consignee, at one point, are bunched . . . in transit, . . . and delivered by the carrier line in accumulated numbers in excess of daily shipments, the consignee shall be allowed such free time as he would have been entitled to had the cars been delivered in accordance with the daily rate of shipment.”

Natl. Code of Demurrage Rules, Rule No. 8.

Am. Hay Co. vs. C. V. Ry. Co., 29 I. C. C. Rep. 659, 663.

Brooklyn Cooperage Co. vs. I. C. R. R. Co., 22 I. C. C. Rep. 358.

Lynah & Read vs. B. & O. R. R. Co., 18 I. C. C. Rep. 38, 46.

Am. Creosoting Works vs. I. C. R. R. Co., 15 I. C. C. Rep. 160, 164.

Compare—

Alan Wood, Iron & Steel Co. vs. P. R. R. Co., 24 I. C. C. Rep. 27, 31.

§ 38. Waiver of Demurrage Charges on Account of Adverse Weather Conditions.

The National Code of Demurrage Rules makes the following provision governing the accruing of demurrage charges during adverse weather conditions:

"1. When the condition of the weather during the prescribed free time is such as to make it impossible to employ men or teams in loading or unloading, or impossible to place freight in cars, or to move it from cars, without serious injury to the freight, the free time shall be extended until a total of 48 hours free from such weather interference shall have been allowed.

"2. When shipments are frozen while in transit so as to prevent unloading during the prescribed free time. This exemption shall not include shipments which are tendered to consignee in condition to unload. Under this rule consignees will be required to make diligent effort to unload such shipments.

"3. When, because of high water or snowdrifts, it is impossible to get to cars for loading or unloading during the prescribed free time.

"This rule shall not absolve a consignor or consignee from liability for demurrage if others similarly situated and under the same conditions are able to load or unload cars."

It is not permissible to provide that demurrage may be refunded or waived in case of inclement weather and leave it to the judgment of some person to determine what constitutes inclement weather. It is permissible to provide that demurrage shall be waived or refunded in case of weather interference of such severity as to damage the freight in handling it into or from the car, or when shipment is frozen so as to prevent or seriously hinder unloading, or when because of flood or high water, or because of

snowdrifts which it is the carrier's duty to remove, it is impracticable to get to car for loading or unloading.

(Amending Confr. Rule 223. See important note to Confr. Rule 242. Rule in Supplement 2, Tariff Circular 15-A, is now reported as Rule 75 of Tariff Circular 18-A.)

Conf. Rulings Bull. No. 6, Ruling No. 135, January 27, 1909.

Natl. Code of Demurrage Rules, Rule No. 8, Sect. A, Pars. 1, 2 and 3.

See also—

Alan Wood, Iron & Steel Co. vs. P. R. R. Co., 24 I. C. C. Rep. 27, 31.

§ 39. Waiver of Demurrage Charges Unlawful Under Terms of Lease with Shipper.

A terminal company entered into a contract with a shipper of cottonseed products and gave him thereby certain privileges, including the waiver of demurrage or wharfage charges, which it did not give to other shippers of the same commodities. The giving of undue preference to any shipper is condemned by the statute, and it can make no difference that such preference is given by a contract which purports to be a lease of property. To hold otherwise would in effect sanction a device to evade the law. The Commission held it an undue preference and, therefore, unlawful, to exempt the contracting shipper from the payment of demurrage or wharfage charges, which were exacted from all other shippers, and to furnish him with exclusive space on the docks of the terminal company to store and handle cottonseed products, which it at the same time refused to furnish other shippers, under like circumstances.

Carl Eichenberg vs. So. Pac. Co. et al., 14 I. C. C. R. 250.

§ 40. Collection of Demurrage Charges Under Unfiled Tariffs.

Demurrage assessed without tariff authority is wrongfully imposed, since no penalties may be inflicted by the carrier without tariff authority.

The Commission will not entertain with favor claims for refund of demurrage charges, collected in accordance with a carrier's established practice, solely upon the ground that the demurrage tariffs were not on file with the Commission at the time the demurrage charges accrued. The failure to file demurrage tariffs constitutes a violation of the act, with which the Commission will deal through the Division of Prosecutions. (See Confr. Rule 184.)

Conf. Rulings Bull. No. 6, Ruling No. 194, June 14, 1909.

Crutchfield & Woolfolk vs. S. P. Co., 24 I. C. C. Rep. 651, 655.

Germain Co. vs. N. O. & N. E. R. R. Co., 17 I. C. C. Rep. 22.

Monroe & Sons vs. M. C. R. R. Co., 17 I. C. C. Rep. 27.

§ 41. Demurrage Charges Accruing on Account of Strike.

(See Sect. 26, hereof, "Demurrage Charges Resulting from Strikes.")

§ 42. Demurrage Accruing on Account Embargo.

An embargo is an order issued by the carrier against connecting carrier or carriers refusing to accept any traffic at all, or a particular class of traffic, or the restriction may be qualified as to certain deliveries, or as to other legitimate conditions and incapacities. An embargo is justifiable only by conditions beyond the carrier's control, such as congestion of traffic, the act of God, etc. Justifiable embargoes are not unlawful. In instances where embargoes become necessary, it is the general practice, and a proper one, to give preference to the movement of live

stock, perishable freights, and the necessary supplies of the carrier.

Since an embargo is a "war measure," so to speak, or an extraordinary remedy applied by the carrier, its purpose is not intended as an incentive to promptly release the railway's equipment, but, rather, to prevent further movement until such time as measures can be taken to remove the accumulation of traffic.

The Commission has refused to condemn the absence from the National Code of Demurrage Rules of a waiver of demurrage accruing on account of embargoes. The conditions of the embargo may be such that demurrage may not justly accrue, or the situation may be one in which the accruing of demurrage charges is not the actual result of the embargo. If the shipper or consignee be without fault and the embargo, representing the physical inability of the carrier or carriers to move the car or cars, is the cause which leads to the assessment of the demurrage charges, such demurrage charges should be waived.

Peale, Peacock & Kerr vs. C. R. R. of N. J., 18 I. C. C. Rep. 25, 34.

Assessment of demurrage charges on coal consigned to and for the use of a common carrier, which accrued on account of that carrier's embargo against connecting line at destination, not found unreasonable or unjustly discriminatory.

Crescent Coal & Min. Co. vs. B. & O. R. R. Co., 23 I. C. C. Rep. 81.

See also—

Crescent Coal & Mining Co. vs. B. & O. R. R. Co., 23 I. C. C. Rep. 81, 82.

Crescent Coal & Mining Co. vs. B. & O. R. R. Co., 20 I. C. C. Rep. 559.

Cases holding that demurrage may not be assessed except for or because of the failure on the part of the shipper or consignee to comply with his obligations are as follows:

- * *Rossie Iron Ore Co. vs. N. Y. C. & H. R. R. R. Co.*, 17 I. C. C. Rep. 392.
- American Creosoting Works vs. I. C. R. R. Co.*, 15 I. C. C. Rep. 160.
- Porter vs. St. L. & S. F. R. R. Co.*, 15 I. C. C. Rep. 1.
- N. Y. Hay Exchange Assn. vs. P. R. R. Co.*, 14 I. C. C. Rep. 178.
- Coomes & McGraw vs. C., M. & St. P. Ry. Co.*, 13 I. C. C. Rep. 192.

It is also the law that where a switching service remains to be performed by the carrier, delivery of the shipment has not been effected.

- L. & N. R. R. Co. vs. Stock Yards Co.*, 212 U. S. 132.
- McNeill vs. S. Ry. Co.*, 202 U. S. 543.
- Rhodes vs. Iowa*, 170 U. S. 412.
- Union Stock Yards Co. vs. U. S.*, 169 Fed. Rep. 404.

§ 43. Demurrage Charges Must Be Paid by Either the Vendor (Usually the Consignor) or Vendee (Usually the Consignee).

The Commission has held that demurrage must be collected by the carrier from the vendor or the vendee, but that the Commission can not undertake to investigate the facts and determine for the carrier whether the vendor or the vendee is liable for the charges. (See note to Confr. Rule 242.)

Conf. Rulings Bull. No. 6, Ruling No. 96, October 12, 1908.

§ 44. Rules of Interstate Commerce Commission Governing Demurrage Charges Are Not Given Retroactive Effect.

It was not the intention of the Commission that its rulings in the Matter of Demurrage Charges on Privately-

Owned Tank Cars should be given a retroactive effect. The demurrage question had been in a state of confusion, and the desire of the Commission was to establish a uniform, fair, and practicable system for the future. Claims for refund of demurrage charges previously collected in accordance with regular tariff rule, it was stated, would not be entertained with favor.

Cambria Steel Co. vs. B. & O. R. R. Co., 15 I. C. C. R. 484.

See also, In the Matter of Demurrage Charges on Privately-owned tank Cars, 13 I. C. C. R. 378.

For National Code of Uniform Demurrage Rules, see "Industrial Traffic Departments," Chap. IX, sect. 4, "Demurrage."



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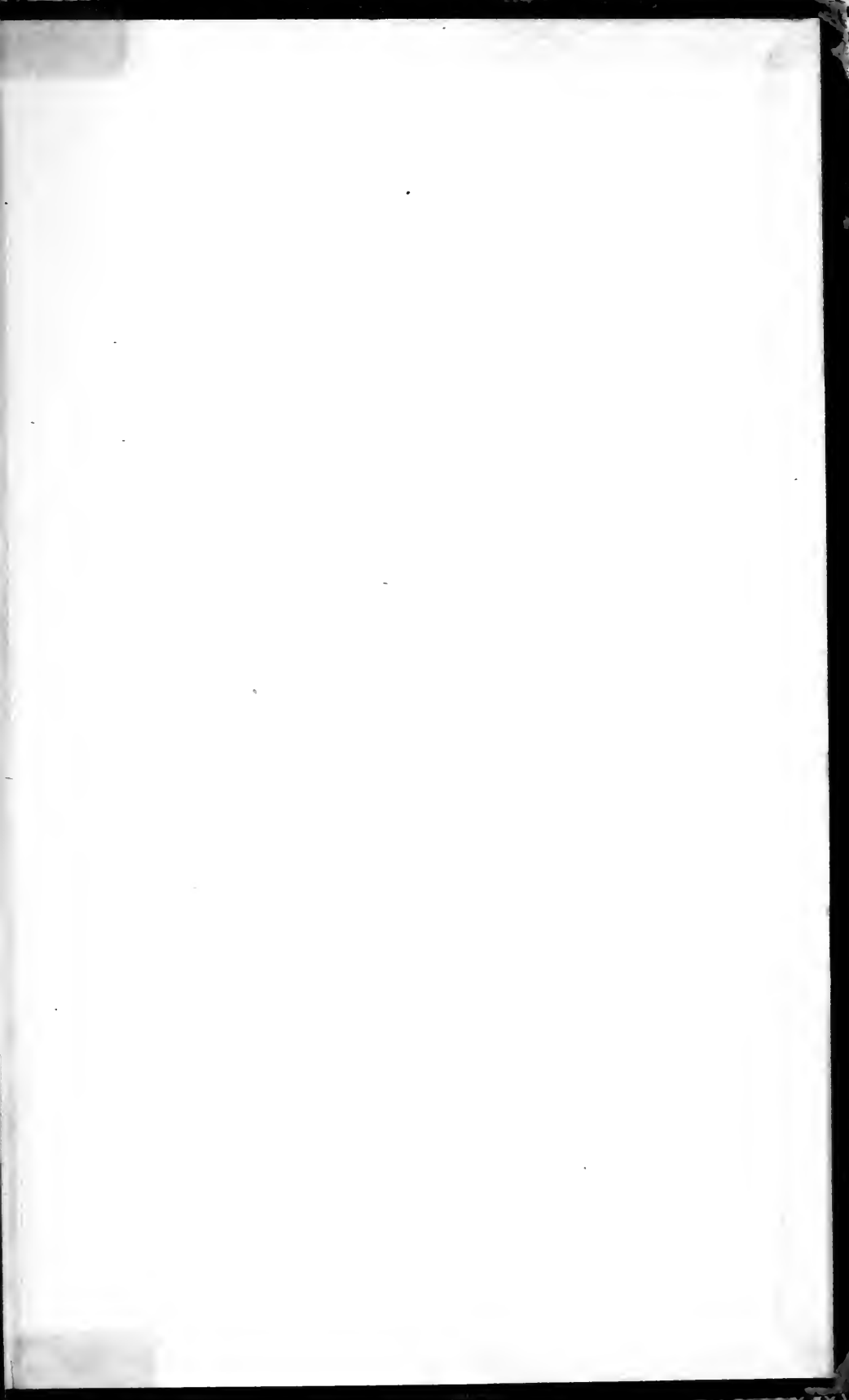
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